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code of federal regulations

Education

COMPLETED

34

PARTS 1 TO 399
Revised as of July 1, 1981

022-003-94635-7

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code of federal regulations

Education

34

PARTS 1 to 399

Revised as of July 1, 1981

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the Federal Register

1934

As of July 1, 1981
Title 34 (Parts 0 to 199)
Revised as of July 1, 1980
Is Replaced by two Volumes:
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Table of Contents

	Page
Explanation	v
Title 34:	
Subtitle A—Office of the Secretary, Department of Education	
Subtitle B—Regulations of the Offices of the Department of Education:	
Chapter I—Office for Civil Rights	295
Chapter II—Office of Elementary and Secondary Education (Parts 200-299)	382
Chapter III—Office of Special Education and Rehabilitative Services (Parts 300-399)	775
Findings Aids:	
Material Approved for Incorporation by Reference	1063
Table of CFR Titles and Chapters	1065
Alphabetical List of Agencies Appearing in the CFR	1079
Redesignation Table	1087
Table 1—List of CFR Sections Affected Formerly Appearing in Title 34—Government Management	1089
List of CFR Sections Affected	1091

Cite this Code CFR

thus: 34 CFR 3.1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

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(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1981.

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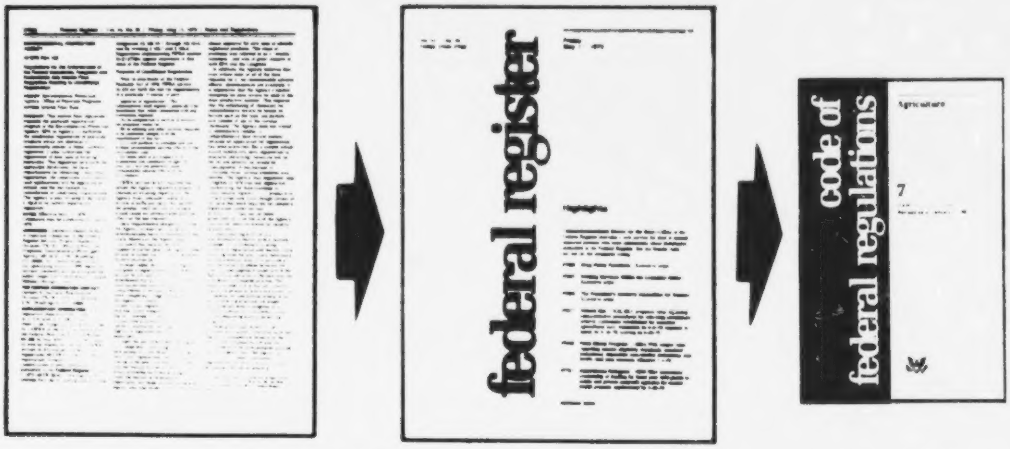

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Title 34—Education

(This book contains Parts 1 to 399)

NOTE 1: Title 34 was reestablished as Education at 45 FR 30803, May 9, 1980, effective May 4, 1980.

NOTE 2: Nomenclature changes affecting Title 34 (Parts 1-399) appear at 45 FR 86296-86301, Dec. 30, 1980.

Part

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION 3

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION:..........

CHAPTER I—Office for Civil Rights 100

Chapter II—Office of Elementary and Secondary Education 200

Chapter III—Office of Special Education and Rehabilitative Services 300

BLANK PAGE

Subtitle A—Office of the Secretary, Department of Education

Part		*Page*
3	Official seal	5
4	Service of process	6
5	Availability of information to the public pursuant to Pub. L. 90-23	6
5b	Privacy Act regulations	14
6	Inventions and patents (general)	25
7	Employee inventions	26
8	Inventions resulting from research grants, fellowship awards, and contracts for research	27
10	Departmental Fellowship Review Panel	29
11	Committee management	31
12	Disposal and utilization of surplus real property for educational purposes	37
15	Relocation assistance and real property acquisition policies	46
17	Release of adverse information to news media	61
30	Claims collection	62
35	Tort claims against the Government	63
50	U.S. Exchange Visitor Program--request for waiver of the two-year foreign residence requirement	66
63	Telecommunications Demonstration Program	68
64	Institute of Museum Services	70
67	Student Loan Marketing Association--issuance and transfer of common stock	80
73	Standards of conduct	81
74	Administration of grants	108

Part		*Page*
75	Direct grant programs	205
76	State-administered programs	243
77	Definitions that apply to Department regulations	269
78	Education Appeal Board	271
99	Privacy rights of parents and students	282

PART 3—OFFICIAL SEAL

Sec.

3.1 Definitions.
3.2 Description.
3.3 Authority to affix seal.
3.4 Use of the seal by persons or organizations outside the Department.

Authority: Pub. L. 96-88; 20 U.S.C. 3472, 3485, unless otherwise noted.

Source: 45 FR 86491, Dec. 31, 1980, unless otherwise noted.

§ 3.1 Definitions.

For the purposes of this part—

(a) "ED" means all organizational units of the Department of Education.

(b) "Embossing Seal" means a display of the form and content of the Official Seal made on a die so that the Seal can be embossed on paper or other media.

(c) "Official Seal" means the original(s) of the Seal showing the exact form, content, and colors.

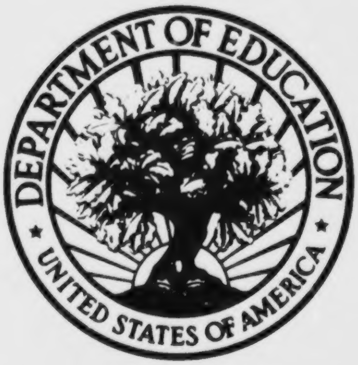
(d) "Replica" means a copy of the Official Seal displaying the identical form, content, and colors.

(e) "Reproduction" means a copy of the Official Seal displaying the form and content, reproduced in only one color.

(f) "Secretary" means the Secretary of Education.

§ 3.2 Description.

The Official Seal of the Department of Education is described as follows: Standing upon a mound, an oak tree with black trunk and limbs and green foliage in front of a gold rising sun, issuing gold rays on a light blue disc, enclosed by a dark blue border with gold edges bearing the inscription "DEPARTMENT OF EDUCATION" above a star at either side of the words "UNITED STATES OF AMERICA" in smaller letters in the base; letters and stars in white. The Offical Seal of the Department is modified when used in reproductions in black and white and when embossed. As so modified, it appears below.



§ 3.3 Authority to affix seal.

The Secretary and the Secretary's designees are authorized to affix the Official Seal, replicas, reproductions, and embossing seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(20 U.S.C. 3474)

§ 3.4 Use of the seal by persons or organizations outside the Department.

(a) Use by any person or organization outside of the Department may be made only with the Department's prior written approval.

(b) Requests by any person or organization outside of the Department for permission to use the Seal must be made in writing to the Assistant Secretary for Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(c) Replicas may be used only—

(1) For display in or adjacent to ED facilities, in Departmental auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms;

(2) In offices of senior officials;

(3) For official awards, certificates, medals, and plaques;

(4) For motion picture film, video tape and other audiovisual media pre-

pared by or for ED and attributed thereto;

(5) On official publications which represent the achievements or mission of ED;

(6) In non-ED facilities in connection with events and displays sponsored by ED, and public appearances of the Secretary or other senior ED officials; and

(7) For other purposes as determined by the Director of the Office of Administrative Resources Management;

(d) Reproductions may be used only—

(1) On ED letterhead stationery;

(2) On official ED identification cards, security, and other approved credentials;

(3) On business cards for ED employees;

(4) On official ED signs;

(5) On official publications or graphics issued by and attributed to ED, or joint statements of ED with one or more other Federal agencies, State or local governments, or foreign governments;

(6) On official awards, certificates, and medals;

(7) On motion picture film, video tape, and other audiovisual media prepard by or for ED and attributed thereto; and

(8) For other purposes as determined by the Director of the Office of Administrative Resources Management.

(e) Embossing seals may be used only—

(1) On ED legal documents, including interagency or intergovernmental agreements, agreements with State or local governments, foreign patent applications, certification(s) of true copies, and similar documents;

(2) On official awards and certificates; and

(3) For other purposes as determined by the General Counsel or Assistant Secretary for Management.

(f) Falsely making, forging, counterfeiting, mutilating, or altering the Official Seal, replicas, reproductions, or embossing seals, or knowingly using or possessing with fraudulent intent and altered official seal, replica, reproduction or embossing seal is punishable under 18 U.S.C. 506.

(g) Any person using the Official Seal, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Official Seal, and to other provisions of law as applicable.

PART 4—SERVICE OF PROCESS

§ 4.1 Service of process required to be served on or delivered to Secretary.

Summons, complaints, subpoenas, and other process which are required to be served on or delivered to the Secretary of Education shall be delivered to the General Counsel or the Secretary to the General Counsel, by mail at 400 Maryland Avenue SW., Washington, D.C. 20202 or by personal service at that address. The persons above designated are authorized to accept service of such process.

(5 U.S.C. 301)

[45 FR 30803, May 9, 1980]

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUB. L. 90-23

Subpart A—Definitions

Sec.
5.1 Act.
5.2 Department.
5.5 Records.

Subpart B—What Records Are Available

5.11 Purpose and scope.
5.12 General policy.
5.13 Records available.
5.14 Published documents.
5.15 Creation of records.
5.16 Deletion of identifying details.
5.17 Records in record centers.
5.18 Destroyed records.
5.19 Records of other departments and agencies.

Subpart C—Freedom of Information Officer

5.32 Freedom of information officer.

Subpart D—Procedures for Requesting Access to Records

Sec.
5.51 Procedure.
5.52 Copies of records.
5.53 Denial of requests for records.

Subpart E—Fees

5.60 Policy on fees.
5.61 Fee schedules.
5.63 Searching records.
5.64 Copying.
5.65 Certification or authentication.

Subpart F—Availability of Specific Records

5.70 Policy.
5.71 Protection of personal privacy and proprietary information.
5.72 Records available.
5.73 Records not available.
5.74 Further disclosure.

Subpart G—Administrative Review

5.80 Review of denial of a record.
5.81 Time for initiation of request for review.
5.82 By whom review is made.
5.83 Contents of request for review.
5.84 Consideration on review.
5.85 Decisions on review.

APPENDIX

AUTHORITY: 81 Stat. 54; 7 U.S.C. 2243, 5 U.S.C. 552.

SOURCE: 45 FR 30803, May 9, 1980, unless otherwise noted.

Subpart A—Definitions

§ 5.1 Act.

As used in this part, "Act" means section 552 of Title 5, United States Code, as amended by Pub. L. 90-23, codifying the Act of July 4, 1966, sometimes referred to as the "Freedom of Information Act".

§ 5.2 Department.

As used in this part, "Department" means the Department of Education.

§ 5.5 Records.

As used in this part:

(a) "Record" includes books, brochures, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, slides, motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Department pursuant to Federal law or in connection with the transaction of public business and preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities.

(b) "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulae, designs, drawings, or other items of valuable property; books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.

Subpart B—What Records Are Available

§ 5.11 Purpose and scope.

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public what records are generally available.

§ 5.12 General policy.

The Department's policy is one of the fullest responsible disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure pursuant to law, records of the Department shall be available for inspection and copying in accordance with this part.

§ 5.13 Records available.

(a) *Publication in the Federal Register.* The following shall be published in the FEDERAL REGISTER:

(1) Descriptions of the Department's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which the Department's functions are channeled and determined, including the nature and

requirements of all formal and informal procedures available;

(3) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department;

(5) Every amendment, revision, or repeal of the foregoing.

(b) *Agency opinions and orders.* The Department shall, in accordance with this part and applicable regulations, make available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations thereof in matters that are not the result of administrative proceedings such as hearings or formal appeals are not "opinions and orders in the adjudication of cases");

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect any member of the public;

unless such materials are promptly published and copies offered for sale.

The Department shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by this paragraph (b) to be published or made available.

(c) *Availability of records on request.* In addition to the records made available pursuant to paragraphs (a) and (b) of this section, the Department shall, upon request for identifiable records made in accordance with this part, make such records available to any person, unless it is determined that such records must be withheld from disclosure and are exempt under subsection (b) of the Act and Subpart F of this part.

§ 5.14 Published documents.

Published records of the Department, whether or not available for purchase, shall be made available for examination.

§ 5.15 Creation of records.

Records are not required to be created by compiling selected items from the files, and records are not required to be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this part.

§ 5.16 Deletion of identifying details.

Whenever any final opinion, order, or other materials required to be made available pursuant to subsection (a)(2) of the Act relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

> Names of parties and certain other identifying details have been removed [and fictitious names substituted] in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 5.17 Records in record centers.

When a request is made for identifiable records of the Department which have been stored in the National Archives or other record centers of the General Services Administration, but would otherwise be available under this Act, such records shall be requested by the Department for the requester.

§ 5.18 Destroyed records.

Records of specified form or character are destroyed after the lapse of time specified in the Records Disposal

Act of 1943 (44 U.S.C. 366-380), the Federal Property Management Regulations (41 CFR Part 101-111), and the Records Control Schedules.

§ 5.19 Records of other departments and agencies.

Requests for records which originated in or concern matters which originated in another Department or Government agency may be forwarded to the Department or agency primarily concerned and the requester so notified.

Subpart C—Freedom of Information Officer

§ 5.32 Freedom of information officer.

The Freedom of Information Officer shall be responsible for determining whether records of the Department must be withheld from disclosure and shall have authority to deny requests for records of the Department.

Subpart D—Procedures for Requesting Access to Records

§ 5.51 Procedure.

(a) A request for any information or record may be made at any appropriate office of the Department.

(b) If a request is made at any office of the Department and the information or record is not located where the request is made, the requester shall be referred to the proper office, or if the request is put in writing it may be forwarded to the proper office.

(c) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as a Freedom of Information request.

(d) Determination of whether records will be released or withheld will be made within 10 working days from date of receipt in the office having custody of the records This time may be extended by written notice for no longer than an additional 10 working days, only in unusual circumstances. Unusual circumstances mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

If such extension is made, the requester will be notified in writing with an explanation of why the extension was necessary and the date on which a determination will be made.

§ 5.52 Copies of records.

Copies of available records shall be produced as promptly as possible upon receipt of the fee therefor. Copying service shall be limited to not more than two copies of any single page, except that additional copies may be made where administrative considerations permit. Records which are published or available for sale need not be copied.

§ 5.53 Denial of request for records.

Written requests for inspection or copying of records shall be denied only by the Freedom of Information Officer. Denials of requests shall be in writing and shall contain the reasons for the denial and provide the requester with appropriate information on how to exercise the right of appeal under Subpart G of this part. Such notification shall also set forth the names and titles or positions of each person responsible for the denial of such request if such person or persons is other than the Freedom of Information Officer.

Subpart E—Fees

§ 5.60 Policy on fees.

It is the policy of the Department to provide routine information to the public without charge. Special information services involving a benefit that does not accrue to the general public shall be subject to the payment of fees which shall be fixed in amounts to recover the direct cost to the Government of providing such services. Fees will be charged for the following special services:

(a) Reproduction, duplication or copying of records;

(b) Certification or authentication of records;

(c) Searches for records.

§ 5.61 Fee schedules.

The fee schedule for the Department is as follows:

(a) (1) Search for records—three dollars per hour provided, however, that no charge will be made for the first half hour.

(2) Reproduction, duplication or copying of records—ten cents per page where such reproduction can be made by commonly available photocopying machines. However, the cost of reproducing records which are not susceptible to such photocopying, e.g. punch cards, magnetic tapes, blueprints, etc., will be determined on a case-by-case basis at actual cost.

(3) Certification or authentication of records—three dollars per certification or authentication.

(4) Forwarding material to destination— any special arrangements for forwarding which are requested by the requester shall be charged on an actual cost basis.

(5) No charge will be made where the total amount does not exceed five dollars.

(b) Waiver or reduction of the fees provided for in this section may be made upon a determination that such waiver or reduction is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 5.63 Searching records.

Fees for searching shall be computed as follows:

(a) A predetermined standard hourly rate for labor and personal services of employees of the Department. Such hourly rates shall be published in advance.

(b) Actual cost to the Government of materials, postage and other direct costs, plus indirect costs to the Government. Such costs shall be determined for each request, at the time of the request, allowing a reasonable period for the development of the estimate.

§ 5.64 Copying.

Fees for copy or duplicating services shall be set on a per page basis. The fee shall be maintained as a predetermined standard rate.

§ 5.65 Certification or authentication.

A fee for certification or authentication of records shall be set on a per document basis. The fee shall be on the basis of a predetermined standard rate. Where the request includes making a copy of the record to be certified, the applicable fee for copying will also be charged. Where the requester furnishes a copy of the document to be authenticated or certified which requires comparison with the record on file, a comparing fee based upon predetermined hourly rates will be applicable.

Subpart F—Availability of Specific Records

§ 5.70 Policy.

This subpart specifies the types of records which the Department shall, in keeping with its policy of fullest possible disclosure, make available for inspection and copying. For clarity and purposes of guidance, there are also set forth below the kinds or portions of records which generally will not be released, except as may be determined under § 5.74. The appendix to this part contains some examples of the kinds of materials which, in accordance with § 5.72, will generally be released and other materials which, in accordance with § 5.73, are not normally available. In the event that any record contains both information which is disclosable and that which is not disclosable under this regulation, the nondisclosable information will be deleted and the balance of the record disclosed.

§ 5.71 Protection of personal privacy and proprietary information.

As set forth with more particularity below, certain types of information in whatever record or document contained shall not be disclosed where disclosure would be inconsistent with individual rights of personal privacy or would violate obligations of confidentiality.

(a) No disclosure will be made of information of a personal and private nature, such as information in personnel and medical files, in welfare and social security records and any other information of a private and personal nature.

(b) Information having a commercial or financial value and in which the person providing the information has a proprietary interest will not be disclosed if it is in fact confidential. In determining whether such information is in fact confidential, consideration may be given to such factors as (1) the general custom or usage in the occupation or business to which the information relates that it be held confidential, (2) the number and situation of the individuals who have access to such information, (3) the type and degree of risk of financial injury to be expected if disclosure occurs, and (4) the length of time such information should be regarded as retaining the characteristics noted above.

(c) Information obtained by the Department from any individual or organization, who furnishes it in reliance upon a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed. This subpart does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

This section does not preclude use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation. Release of information of the nature described in this section to the individual or the organization to whom the information pertains or to an authorized representative of either will not be deemed a disclosure within the meaning of this part.

§ 5.72 Records available.

The following records of the Department shall, subject to the exceptions set forth in §§ 5.71 and 5.73, be available upon request for inspection and copying.

(a) *Correspondence.* Correspondence, relating to or resulting from the conduct of the official business of the Department, between the Department and individuals or organizations which are not agencies within the meaning of 5 U.S.C. 551(1) and 552(e).

(b) *Records pertaining to grants.* (1) Portions of funded initial research grant applications and portions of continuation, renewal or supplemental grant applications, whether funded or not, including interim progress reports and other supporting documents submitted by applicants, which are not otherwise exempted from disclosure by this subpart.

(2) Grant award documents.

(3) All State plans, amendments, and supplements thereto, including applications for the waiver of any provision thereof whether acted upon by the Department or not.

(c) *Contracts.* (1) Contract instruments.

(2) Portions of offers reflecting final prices submitted in negotiated procurements.

(d) *Reports on grantee, contractor, or provider performance.* Final reports of audits, surveys, reviews, or evaluations by, for, or on behalf of the Department, of performance by any grantee, contractor, or provider under any departmentally financed or supported program or activity, which reports have been transmitted to the grantee, contractor, or provider.

(e) *Research, development, and demonstration project records.* The reports of a grantee or a contractor of the performance under any research, development, or demonstration project, records, other than reports, produced in such projects, such as films, computer software, other copyrightable materials and reports of inventions, will be available, except that considerations relating to obtaining copyright and patent protection may require delay in disclosure for such period as necessary to accomplish such protection. Disclosure of records which are copyrightable or which reflect patentable inventions shall not confer upon the requester any license under any copyright or patent without regard to the holder or owner thereof.

§ 5.73 Records not available.

The following types of records or information contained in any record, in addition to those prohibited by law from disclosure, are not available for inspection or copying, any provision of § 5.72 notwithstanding:

(a) *Intra-agency and inter-agency communications.* Communications within the Department other than those described in § 5.72(d) or between the Department or any other agency within the meaning of 5 U.S.C. 551(1) and 552(e), to the extent they reflect the views or judgment of the writer or of other individuals. If disclosure of any factual portion of the communication would indicate the views or judgment being withheld from disclosure, then such factual portions will also be withheld.

(b) *Investigatory files.* Investigatory files compiled for law enforcement purposes to the extent that production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures or (6) endanger the life or physical safety of law enforcement personnel. For the purpose of this section "enforcement action" means any authorized action intended to abate, prevent, counteract, deter, or terminate violations of law and includes action involving possible civil, criminal, or administrative sanctions whether such sanctions involve adversary proceedings or other procedures, such as termination of benefits, protective measures, etc.

§ 5.74 Further disclosure.

(a) The Secretary may in particular instances, except where prohibited by law, disclose documents or portions of documents described in § 5.73 if he determines that disclosure is in the public interest and is consistent with obligations of confidentiality and administrative necessity.

(b) In making such a determination, consideration may be given to the Department's responsibilities under law for dissemination to the public of information relating to education.

(c) When such determination has been made, the particular document or portion of document to which it relates shall thereafter be available upon request for inspection and copying: *Provided however,* That use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation is not a disclosure within the meaning of this section.

Subpart G—Administrative Review

§ 5.80 Review of denial of a record.

This subpart provides for the review of a denial, pursuant to § 5.53, of a written request for inspection or copying of a record.

§ 5.81 Time for initiation of request for review.

A person whose request has been denied may initiate a review by filing a request for review within (a) 30 days of receipt of the determination to deny or (b) within 30 days of receipt of records which are in partial response to his request if a portion of a request is granted and a portion denied, whatever is later.

§ 5.82 By whom review is made.

(a) Requests for review of denials should be addressed to the Secretary.

§ 5.83 Contents of request for review.

The request for review shall include a copy of the written request and the denial.

§ 5.84 Consideration on review.

Review shall be considered on the basis of the written record including any written argument submitted by the requester.

§ 5.85 Decisions on review.

(a) Decisions on review shall be in writing within 20 working days from receipt of the request for review. Extension of the time limit may be granted to the extent that the maximum 10-day limit on extensions has not been exhausted on the initial determination. Such extension may only be granted for the reasons enumerated in § 5.51(d).

(b) The decision, which constitutes final action of the Department, if adverse to the requester shall be in writing, stating the reasons for the decision, and advising the requester of the right to judicial review of such decision.

(c) Failure to comply with time limits set forth in § 5.51 or in this paragraph constitutes an exhaustion of the requester's administrative remedies.

APPENDIX

[The following are some examples of specific records (or specific information relating to personnel, programs, or activities of this Department) listed according to whether or not they are available upon request for inspection and copying]

Generally available	Generally not available
GRANTS	
Funded initial grant applications, subject to provisions of § 5.71. Reports of grantee. Final report of any review or evaluation of grantee performance conducted or caused to be conducted by the Department. Applications for continuation, renewal, or supplemental grants, subject to provisions of § 5.71. State plan material.	Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature submitted with initial applications not yet funded, or where disclosure would adversely affect patent or other valuable rights. Confidential financial information of grantee. Site visit reports. Initial research or research training grant application on which award is not made.
CONTRACTS	
Name of contractor, subject matter, date, and amount of contract.	Trade secrets.
Contract performance review report	Confidential pricing data contained in contract proposal if in the Department's judgment it is properly so designated by the offeror.
Deficiency report	Proprietary technical data contained in a contract proposal if in the Department's judgment it is properly so designated by offeror.
Final report	Confidential financial information of contractor Draft of proposed final report submitted for comment prior to acceptance. Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature, including proprietary contents of unsolicited proposals. Proposals on which no award is made.
ADVISORY COMMITTEES	
Name of committee	Minutes or transcripts of committee meetings or portions thereof which are involved with matters exempt from mandatory disclosure under Freedom of Information Act.
Final report	
Minutes or transcripts of meetings open to the public and not involved with matters exempt from mandatory disclosure under Freedom of Information Act.	
PERSONNEL INFORMATION	
Name of employee, title of position, and location of regular duty station.	Home addresses of employees.

APPENDIX—Continued

[The following are some examples of specific records (or specific information relating to personnel, programs, or activities of this Department) listed according to whether or not they are available upon request for inspection and copying]

Generally available	Generally not available
Grade, position description, and salary of public employees.	
AFFIRMATIVE ACTION PLAN FILED PURSUANT TO EXECUTIVE ORDER 11246	
Approved action plan, including analysis, proposed remedial or affirmative steps to be taken with goals and timetables, policies on recruitment, hiring, and promotion, and description of grievance procedures.	
MISCELLANEOUS	
	Names of individual beneficiaries of departmental programs or a list of the benefits they receive if release would be an unwarranted invasion of privacy. Office for Civil Rights investigatory files in open cases.

PART 5b—PRIVACY ACT REGULATIONS

Sec.
5b.1 Definitions.
5b.2 Purpose and scope.
5b.3 Policy.
5b.4 Maintenance of records.
5b.5 Notification of or access to records.
5b.7 Procedures for correction or amendment of records.
5b.8 Appeals of refusals to correct or amend records.
5b.9 Disclosure of records.
5b.10 Parents and guardians.
5b.11 Exempt systems.
5b.12 Contractors.
5b.13 Fees.

APPENDIX A—EMPLOYEE STANDARDS OF CONDUCT
APPENDIX B—ROUTINE USES APPLICABLE TO MORE THAN ONE SYSTEM OF RECORDS MAINTAINED BY ED

AUTHORITY: 5 U.S.C. 301, 5 U.S.C. 552a.

SOURCE: 45 FR 30808, May 9, 1980, unless otherwise noted.

§ 5b.1 Definitions.

As used in this part:

(a) "Access" means availability of a record to a subject individual.

(b) "Agency" means the Department of Education.

(c) "Department" means the Department of Education.

(d) "Disclosure" means the availability or release of a record to anyone other than the subject individual.

(e) "Individual" means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this part.

(f) "Maintain" means to maintain, collect, use, or disseminate when used in connection with the term "record"; and, to have control over or responsibility for a system of records when used in connection with the term "system of records."

(g) "Notification" means communication to an individual whether he is a subject individual.

(h) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Department, including but not limited to the individual's education, financial transactions, medical history, and criminal or employment history and that contains his name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. When used in this part, record means only a record which is in a system of records.

(i) "Responsible Department official" means that officer who is listed in a notice of a system of records as the system manager for a given system of records or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

(j) "Routine use" means the disclosure of a record outside the Department, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the Freedom of Information Act, 5 U.S.C. 552. It does not include disclosures which are permitted to be made without the consent of the subject individual which are not compatible with the purpose for which it was collected such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

(k) "Secretary" means the Secretary of Education.

(l) "Statistical record" means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

(m) "Subject individual" means that individual to whom a record pertains.

(n) "System of records" means any group of records under the control of the Department from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual employees of the Department which are prepared, maintained, or discarded at the discretion of the employee and which are not subject to the Federal Records Act, 44 U.S.C. 2901, are not part of a system of records; *Provided*, That such personal papers are not used by the employee or the Department to determine any rights, benefits, or privileges of individuals.

[45 FR 30808, May 9, 1980; 45 FR 37426, June 3, 1980]

§ 5b.2 Purpose and scope.

(a) This part implements section 3 of the Privacy Act of 1974, 5 U.S.C. 552a (hereinafter referred to as the Act), by establishing agency policies and procedures for the maintenance of records. This part also establishes agency policies and procedures under which a subject individual may be given notification of or access to a record pertaining to him and policies and procedures under which a subject individual may have his record corrected or amended if he believes that his record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function.

(b) All components of the Department are governed by the provisions of this part. Also governed by the provisions of this part are advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to (1) any official or component of the Department or (2) the President and for which the Department has been delegated responsibility for providing services.

(c) Employees of the Department governed by this part include all regular and special government employees of the Department; experts and consultants whose temporary (not in excess of 1 year) or intermittent services have been procured by the Department by contract pursuant to 3109 of title 5, United States Code; volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by the Office of Personnel Management; and, participants in work-study or training programs.

(d) This part does not:

(1) Make available to a subject individual records which are not retrieved by that individual's name or other personal identifier.

(2) Make available to the general public records which are retrieved by a subject individual's name or other personal identifier or make available to the general public records which would otherwise not be available to the general public under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(3) Govern the maintenance or disclosure of, notification of or access to, records in the possession of the Department which are subject to regulations of another agency, such as personnel records subject to the regula-

tions of the Office of Personnel Management.

(4) Apply to grantees, including State and local governments or subdivisions thereof, administering federally funded programs.

(5) Make available records compiled by the Department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, and applicable regulations of the Department.

§ 5b.3 Policy.

It is the policy of the Department to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill the administrative and program responsibilities of the Department, and responsibilities of the Department for disclosing records which the general public is entitled to have under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

§ 5b.4 Maintenance of records.

(a) No record will be maintained by the Department unless:

(1) It is relevant and necessary to accomplish a Department function required to be accomplished by statute or Executive Order;

(2) It is acquired to the greatest extent practicable from the subject individual when maintenance of the record may result in a determination about the subject individual's rights, benefits or privileges under Federal programs;

(3) The individual providing the record is informed of the authority for providing the record (including whether the providing of the record is mandatory or voluntary, the principal purpose for maintaining the record, the routine uses for the record, what effect his refusal to provide the record may have on him), and if the record is not required by statute or Executive Order to be provided by the individual, he agrees to provide the record.

(b) No record will be maintained by the Department which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized (1) by statute, or (2) by the subject individual, or (3) unless pertinent to and within the scope of an authorized law enforcement activity.

§ 5b.5 Notification of or access to records.

(a) *Times, places, and manner of requesting notification of or access to a record.* (1) Any individual may request notification of a record. He may at the same time request access to any record pertaining to him. An individual may be accompanied by another individual of his choice when he requests access to a record in person; *Provided,* That he affirmatively authorizes the presence of such other individual during any discussion of a record to which access is requested.

(2) An individual making a request for notification of or access to a record shall address his request to the responsible Department official and shall verify his identity when required in accordance with paragraph (b)(2) of this section. At the time the request is made, the individual shall specify which systems of records he wishes to have searched and the records to which he wishes to have access. He may also request that copies be made of all or any such records. An individual shall also provide the responsible Department official with sufficient particulars to enable such official to distinguish between records on subject individuals with the same name. The necessary particulars are set forth in the notices of systems of records.

(3) An individual who makes a request in person may leave with any responsible Department official a request for notification of or access to a record under the control of another responsible Department official; *Provided,* That the request is addressed in writing to the appropriate responsible Department official.

(b) *Verification of identity*—(1) *When required.* Unless an individual, who is making a request for notification of or access to a record in person, is personally known to the responsible

Department official, he shall be required to verify his identity in accordance with paragraph (b)(2) of this section if:

(i) He makes a request for notification of a record and the responsible Department official determines that the mere disclosure of the existence of the record would be a clearly unwarranted invasion of privacy if disclosed to someone other than the subject individual; or,

(ii) He makes a request for access to a record which is not required to be disclosed to the general public under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(2) *Manner of verifying identity.* (i) An individual who makes a request in person shall provide to the responsible Department official at least one piece of tangible identification such as a driver's license, passport, alien or voter registration card, or union card to verify his identity. If an individual does not have identification papers to verify his identity, he shall certify in writing that he is the individual who he claims to be and that he understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine.

(ii) Except as provided in paragraph (b)(2)(v) of this section, an individual who does not make a request in person shall submit a notarized request to the responsible Department official to verify his identity or shall certify in his request that he is the individual who he claims to be and that he understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine.

(iii) An individual who makes a request on behalf of a minor or legal incompetent as authorized under § 5b.10 of this part shall verify his relationship to the minor or legal incompetent, in addition to verifying his own identity, by providing a copy of the minor's birth certificate, a court order, or other competent evidence of guardianship to the responsible Department official; *except that,* an individual is not required to verify his relationship to the minor or legal incompetent when he is not required to verify his own identity or when evidence of his relationship to the minor or legal incompetent has been previously given to the responsible Department official.

(iv) An individual shall further verify his identity if he is requesting notification of or access to sensitive records. Any further verification shall parallel the record to which notification or access is being sought. Such further verification may include such particulars as the individual's years of attendance at a particular educational institution, rank attained in the uniformed services, date or place of birth, names of parents, or an occupation.

(v) An individual who makes a request by telephone shall verify his identity by providing to the responsible Department official identifying particulars which parallel the record to which notification or access is being sought. If the responsible Department official determines that the particulars provided by telephone are insufficient, the requester will be required to submit the request in writing or in person. Telephone requests will not be accepted where an individual is requesting notification of or access to sensitive records.

(c) *Granting notification of or access to a record.* (1) Subject to the provisions governing exempt systems in § 5b.11 of this part, a responsible Department official, who receives a request for notification of or access to a record and, if required, verification of an individual's identity, will review the request and grant notification or access to a record, if the individual requesting access to the record is the subject individual.

(2) If the responsible Department official determines that there will be a delay in responding to a request because of the number of requests being processed, a breakdown of equipment, shortage of personnel, storage of records in other locations, etc., he will so inform the individual and indicate when notification or access will be granted.

(3) Prior to granting notification of or access to a record, the responsible Department official may at his discretion require an individual making a re-

quest in person to reduce his request to writing if the individual has not already done so at the time the request is made.

§ 5b.7 Procedures for correction or amendment of records.

(a) Any subject individual may request that his record be corrected or amended if he believes that the record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function. A subject individual making a request to amend or correct his record shall address his request to the responsible Department official in writing; *except that*, the request need not be in writing if the subject individual makes his request in person and the responsible Department official corrects or amends the record at that time. The subject individual shall specify in each request:

(1) The system of records from which the record is retrieved;

(2) The particular record which he is seeking to correct or amend;

(3) Whether he is seeking an addition to or a deletion or substitution of the record; and,

(4) His reasons for requesting correction or amendment of the record.

(b) A request for correction or amendment of a record will be acknowledged within 10 working days of its receipt unless the request can be processed and the subject individual informed of the responsible Department official's decision on the request within that 10 day period.

(c) If the responsible Department official agrees that the record is not accurate, timely, or complete based on a preponderance of the evidence, the record will be corrected or amended. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Department function for which the record was provided or is maintained. In either case, the subject individual will be informed in writing of the correction, amendment, or deletion and, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(d) If the responsible Department official does not agree that the record should be corrected or amended, the subject individual will be informed in writing of the refusal to correct or amend the record. He will also be informed that he may appeal the refusal to correct or amend his record § 5b.8 of this part.

(e) Requests to correct or amend a record governed by the regulation of another government agency, *e.g.*, Office of Personnel Management, Federal Bureau of Investigation, will be forwarded to such government agency for processing and the subject individual will be informed in writing of the referral.

§ 5b.8 Appeals of refusals to correct or amend records.

(a) *Processing the appeal.* (1) A subject individual who disagrees with a refusal to correct or amend his record may appeal the refusal in writing. All appeals shall be made to the Secretary.

(2) An appeal will be completed within 30 working days from its receipt by the appeal authority; *except that*, the appeal authority may for good cause extend this period for an additional 30 days. Should the appeal period be extended, the subject individual appealing the refusal to correct or amend the record will be informed in writing of the extension and the circumstances of the delay. The subject individual's request to amend or correct the record, the responsible Department official's refusal to correct or amend, and any other pertinent material relating to the appeal will be reviewed. No hearing will be held.

(3) If the appeal authority agrees that the record subject to the appeal should be corrected or amended, the record will be amended and the subject individual will be informed in writing of the correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(4) If the appeal is denied, the subject individual will be informed in writing:

(i) Of the denial and the reasons for the denial;

(ii) That he has a right to seek judicial review of the denial; and,

(iii) That he may submit to the responsible Department official a concise statement of disagreement to be associated with the disputed record and disclosed whenever the record is disclosed.

(b) *Notation and disclosure of disputed records.* Whenever a subject individual submits a statement of disagreement to the responsible Department official in accordance with paragraph (a)(4)(iii) of this section, the record will be noted to indicate that it is disputed. In any subsequent disclosure, a copy of the subject individual's statement of disagreement, will be disclosed with the record. If the responsible Department official deems it appropriate, a concise statement of the appeal authority's reasons for denying the subject individual's appeal may also be disclosed with the record. While the subject individual will have access to this statement of reasons, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of the subject individual's statement of disagreement, as well as the statement, if any, of the appeal authority's reasons for denying the subject individual's appeal.

§ 5b.9 Disclosure of records.

(a) *Consent to disclosure by a subject individual.* (1) Except as provided in paragraph (b) of this section authorizing disclosures of records without consent, no disclosure of a record will be made without the consent of the subject individual. In each case the consent, whether obtained from the subject individual at the request of the Department or whether provided to the Department by the subject individual on his own initiative, shall be in writing. The consent shall specify the individual, organizational unit or class of individuals or organizational units to whom the record may be disclosed, which record may be disclosed and, where applicable, during which time frame the record may be disclosed (*e.g.*, during the school year, while the subject individual is out of the country, whenever the subject individual is receiving specific services). A blanket consent to disclose all of a subject individual's records to unspecified individuals or organizational units will not be honored. The subject individual's identity and, where applicable (*e.g.*, where a subject individual gives consent to disclosure of a record to a specific individual), the identity of the individual to whom the record is to be disclosed shall be verified.

(2) A parent or guardian of any minor is not authorized to give consent to a disclosure of the minor's medical record.

(b) *Disclosures without the consent of the subject individual.* The disclosures listed in this paragraph may be made without the consent of the subject individual. Such disclosures are:

(1) To those officers and employees of the Department who have a need for the record in the performance of their duties. The responsible Department official may upon request of any officer or employee, or on his own initiative, determine what constitutes legitimate need.

(2) Required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(3) For a routine use as defined in paragraph (j) of § 5b.1. Routine uses will be listed in any notice of a system of records. Routine uses published in Appendix B are applicable to more than one system of records. Where applicable, notices of systems of records may contain references to the routine uses listed in Appendix B. Appendix B will be published with any compendium of notices of systems of records.

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S.C.

(5) To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; *Provided,* That, the record is transferred in a form that does not identify the subject individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.

(7) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the Department specifying the record desired and the law enforcement activity for which the record is sought.

(8) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject individual.

(9) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to the order of a court of competent jurisdiction.

(c) *Accounting of disclosures.* (1) An accounting of all disclosures of a record will be made and maintained by the Department for 5 years or for the life of the record, whichever is longer; *except that,* such an accounting will not be made:

(i) For disclosures under paragraphs (b) (1) and (2) of this section; and,

(ii) For disclosures made with the written consent of the subject individual.

(2) The accounting will include:

(i) The date, nature, and purpose of each disclosure; and

(ii) The name and address of the person or entity to whom the disclosure is made.

(3) Any subject individual may request access to an accounting of disclosures of a record. The subject individual shall make a request for access to an accounting in accordance with the procedures in § 5b.5 of this part. A subject individual will be granted access to an accounting of the disclosures of a record in accordance with the procedures of this part which govern access to the related record. Access to an accounting of a disclosure of a record made under paragraph (b)(7) of this section may be granted at the discretion of the responsible Department official.

§ 5b.10 Parents and guardians.

For the purpose of this part, a parent or guardian of any minor or the legal guardian or any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction is authorized to act on behalf of an individual or a subject individual. Except as provided in paragraph (b)(2) of § 5b.5, of this part governing procedures for verifying an individual's identity, an individual authorized to act on behalf of a minor or legal incompetent will be viewed as if he were the individual or subject individual.

§ 5b.11 Exempt systems.

(a) *General policy.* The Act permits certain types of specific systems of records to be exempt from some of its requirements. It is the policy of the Department to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted.* (1) Those systems of records listed in paragraph (b)(2) of this section are exempt from the following provisions of the Act and this part:

(i) 5 U.S.C. 552a(c)(3) and paragraph (c)(2) of § 5b.9 of this part which require a subject individual to be granted access to an accounting of disclosures of a record.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.6, 5b.7, and 5b.8 of this part relating to notification of or access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H) which require inclusion of information about Department procedures for notification, access, and correction or amendment of records in the notice for the systems of records.

(iv) 5 U.S.C. 552(e)(3) and paragraph (a)(3) of § 5b.4 of this part which require that an individual asked to provide a record to the Department be informed of the authority for providing the record (including whether the providing of the record is mandatory or voluntary, the principal purposes for maintaining the record, the routine uses for the record, and what effect his refusal to provide the record may have on him), and if the record is not required by statute or Executive Order to be provided by the individual, he agrees to provide the record. This exemption applies only to an investigatory record compiled by the Department for criminal law enforcement purposes in a system of records exempt under subsection (j)(2) of the Act to the extent that these requirements would prejudice the conduct of the investigation.

(2) The following systems of records are exempt from those provisions of the Act and this part listed in paragraph (b) (1) of this section.

(i) Pursuant to subsection (j)(2) of the Act:

The Investigatory Material Compiled for Law Enforcement Purposes System, ED.

(ii) [Reserved]

(iii) [Reserved]

(iv) Pursuant to subsection (k)(5) of the Act:

(A) The Investigatory Material Compiled for Security and Suitability Purposes System, ED; and,

(B) The Suitability for Employment Records, ED.

(c) *Notification of or access to records in exempt systems of records.* (1) Where a system of records is exempt as provided in paragraph (b) of this section, any individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a record in an exempt system of records in accordance with the procedures of §§ 5b.5 and 5b.6 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent such notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and prior to September 27, 1975 an implied promise, that his identity would be held in confidence, if:

(i) The record is in a system of records which is exempt under subsection (k)(2) of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he would otherwise be eligible; or,

(ii) The record is in a system of records which is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k) (2) and (5) of the Act in accordance with this paragraph, he will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to him.

(d) *Discretionary actions by the responsible Department official.* Unless disclosure of a record to the general public is otherwise prohibited by law, the responsible Department official may in his discretion grant notification of or access to a record in a system of records which is exempt under paragraph (b) of this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his discretion to grant notification of or access to any other record in a system of records which is exempt under paragraph (b) of this section.

§ 5b.12 Contractors.

(a) All contracts entered into on or after September 27, 1975 which require a contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function must contain a provision requiring the contractor to comply with the Act and this part.

(b) All unexpired contracts entered into prior to September 27, 1975 which require the contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function will be amended as soon as practicable to include a provision requiring the contractor to comply with the Act and this part. All such contracts must be so amended by July 1, 1976 unless for good cause the appeal authority identified in § 5b.8 of this part authorizes the continuation of the contract without amendment beyond that date.

(c) A contractor and any employee of such contractor shall be considered employees of the Department only for the purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i), and the employee standards of conduct listed in Appendix A of this part where the contract contains a provision requiring the contractor to comply with the Act and this part.

(d) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, *e.g.*, the contractor's personnel records.

§ 5b.13 Fees.

(a) *Policy.* Where applicable, fees for copying records will be charged in accordance with the schedule set forth in this section. Fees may only be charged where an individual requests that a copy be made of the record to which he is granted access. No fee may be charged for making a search of the system of records whether the search is manual, mechanical, or electronic. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to the individual without cost.

(b) *Fee schedule.* The fee schedule for the Department is as follows:

(1) Copying of records susceptible to photocopying—$.10 per page.

(2) Copying records not susceptible to photocopying (*e.g.*, punch cards or magnetic tapes)—at actual cost to be determined on a case-by-case basis.

(3) No charge will be made if the total amount of copying does not exceed $25.

APPENDIX A—EMPLOYEE STANDARDS OF CONDUCT

(a) *General.* All employees are required to be aware of their responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a. Regulations implementing the Act are set forth in 34 CFR 5b. Instruction on the requirements of the Act and regulation shall be provided to all new employees of the Department. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Act and are advised of any new provisions or interpretations of the Act.

(b) *Penalties.* (1) All employees must guard against improper disclosure of records which are governed by the Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Act and regulations and failed to inform himself sufficiently or to conduct himself in accordance with the requirements to avoid violations.

(2) The Department may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Act and §§ 5b.7 and 5b.8 of the regulation not to amend an individual's record in accordance with his request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him;

(c) Failing to maintain any record pertaining to any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such a record, and consequently a determination is made which is adverse to the individual; or

(d) Failing to comply with any other provision of the Act or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(3) "An employee may be personally subject to criminal liability as set forth below and in 5 U.S.C. 552a (i):

(a) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by the Act or by rules or regulations established thereunder, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000."

(b) "Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements [of the Act] shall be guilty of a misdemeanor and fined not more than $5,000."

(c) *Rules Governing Employees Not Working With Systems of Records.* Employees whose duties do not involve working with systems of records will not generally disclose to any one, without specific authorization from their supervisors, records pertaining to employees or other individuals which by reason of their official duties are available to them. Notwithstanding the above, the following records concerning Federal employees are a matter of public record and no further authorization is necessary for disclosure:

(1) Name and title of individual.

(2) Grade classification or equivalent and annual rate of salary.

(3) Position description.

(4) Location of duty station, including room number and telephone number.

In addition, employees shall disclose records which are listed in the Department's Freedom of Information Regulation as being available to the public. Requests for other records will be referred to the responsible Department official. This does not preclude employees from discussing matters which are known to them personally, and without resort to a record, to official investigators of Federal agencies for official purposes such as suitability checks, Equal Employment Opportunity investigations, adverse action proceedings, grievance proceedings, etc.

(d) *Rules governing employees whose duties require use or reference to systems of records.* Employees whose official duties require that they refer to, maintain, service, or otherwise deal with systems of records (hereinafter referred to as "Systems Employees") are governed by the general provisions. In addition, extra precautions are required and systems employees are held to higher standards of conduct.

(1) Systems Employees shall:

(a) Be informed with respect to their responsibilities under the Act;

(b) Be alert to possible misuses of the system and report to their supervisors any potential or actual use of the system which they believe is not in compliance with the Act and regulation;

(c) Make a disclosure of records within the Department only to an employee who has a legitimate need to know the record in the course of his official duties;

(d) Maintain records as accurately as practicable.

(e) Consult with a supervisor prior to taking any action where they are in doubt whether such action is in conformance with the Act and regulation.

(2) Systems Employees shall not:

(a) Disclose in any form records from a system of records except (1) with the consent or at the request of the subject individual; or (2) where its disclosure is permitted under § 5b.9 of the regulation.

(b) Permit unauthorized individuals to be present in controlled areas. Any unauthorized individuals observed in controlled areas shall be reported to a supervisor or to the guard force.

(c) Knowingly or willfully take action which might subject the Department to civil liability.

(d) Make any arrangements for the design development, or operation of any system of records without making reasonable effort to provide that the system can be maintained in accordance with the Act and regulation.

(e) *Contracting officers.* In addition to any applicable provisions set forth above, those employees whose official duties involve entering into contracts on behalf of the Department shall also be governed by the following provisions:

(1) *Contracts for design, or development of systems and equipment.* No contract for the design or development of a system of records, or for equipment to store, service or maintain a system of records shall be entered into unless the contracting officer has made reasonable effort to ensure that the product to be purchased is capable of being used without violation of the Act or regulation. Special attention shall be given to provision of physical safeguards.

(2) *Contracts for the operation of systems and equipment.* No contract for the design or development of a system of whom he feels appropriate, of all proposed contracts providing for the operation of systems of records shall be made prior to execution of the contracts to determine whether operation of the system of records is for the purpose of accomplishing a Department function. If a determination is made that the operation of the system is to accomplish a Department function, the contracting officer shall be responsible for including in the con-

tract appropriate provisions to apply the provisions of the Act and regulation to the system, including prohibitions against improper release by the contractor, his employees, agents, or subcontractors.

(3) *Other service contracts.* Contracting officers entering into general service contracts shall be responsible for determining the appropriateness of including provisions in the contract to prevent potential misuse (inadvertent or otherwise) by employees, agents, or subcontractors of the contractor.

(f) *Rules Governing Responsible Department Officials.* In addition to the requirements for Systems Employees, responsible Department officials shall:

(1) Respond to all requests for notification of or access, disclosure, or amendment of records in a timely fashion in accordance with the Act and regulation;

(2) Make any amendment of records accurately and in a timely fashion;

(3) Inform all persons whom the accounting records show have received copies of the record prior to the amendments of the correction; and

(4) Associate any statement of disagreement with the disputed record, and

(a) Transmit a copy of the statement to all persons whom the accounting records show have received a copy of the disputed record, and

(b) Transmit that statement with any future disclosure.

Appendix B—Routine Uses Applicable to More Than One System of Records Maintained by DE

(1) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(2) Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

(3) In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(4) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(5) In the event that a system of records maintained by this agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether state or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(6) Where federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(7) Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

(8) Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

(9) The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a

contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(10) To individuals and organizations, deemed qualified by the Secretary to carry out specific research solely for the purpose of carrying out such research.

(11) Disclosures in the course of employee discipline or competence determination proceedings.

[45 FR 30808, May 9, 1980; 45 FR 37426, June 3, 1980]

PART 6—INVENTIONS AND PATENTS (GENERAL)

Sec.

6.0 General policy.
6.1 Publication or patenting of inventions.
6.3 Licensing of Government-owned patents.
6.4 Central records; confidentiality.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 30814, May 9, 1980, unless otherwise noted.

§ 6.0 General policy.

Inventions developed through the resources and activities of the Department are a potential resource of great value to the public. It is the policy of the Department:

(a) To safeguard the public interest in inventions developed by Department employees, contractors and grantees with the aid of public funds and facilities;

(b) To encourage and recognize individual and cooperative achievement in research and investigations; and

(c) To establish a procedure, consistent with pertinent statutes, Executive orders and general Government regulations, for the determination of rights and obligations relating to the patenting of inventions.

§ 6.1 Publication or patenting of inventions.

It is the general policy of the Department that the results of Department research should be made widely, promptly and freely available to other research workers and to the public. This availability can generally be adequately preserved by the dedication of a Government-owned invention to the public. Determinations to file a domestic patent application on inventions in which the Department has an interest will be made where the circumstances indicate that this is desirable in the public interest, and if it is practicable to do so. Department determinations not to apply for a domestic patent on employee inventions are subject to review and approval by the Commissioner of Patents. Except where deemed necessary for protecting the patent claim, the fact that a patent application has been or may be filed will not require any departure from normal policy regarding the dissemination of the results of Department research.

§ 6.3 Licensing of Government-owned patents.

(a) Licenses to practice inventions covered by patents and pending patent applications owned by the U.S. Government as represented by this Department will generally be royalty free, revocable and nonexclusive. They will normally be issued to all applicants and will generally contain no limitations or standards relating to the quality or testing of the products to be manufactured, sold, or distributed thereunder.

(b) Where it appears however that the public interest will be served under the circumstances of the particular case by licenses which impose conditions, such as those relating to quality or testing of products, requirement of payment of royalties to the Government, etc., or by the issuance of limited exclusive licenses by the Secretary after notice and opportunity for hearing thereon, such licenses may be issued.

§ 6.4 Central records; confidentiality.

Central files and records shall be maintained of all inventions, patents, and licenses in which the Department has an interest, together with a record of all licenses issued by the Department under such patents. Invention reports required from employees or others for the purpose of obtaining determinations of ownership, and documents and information obtained for the purpose of prosecuting patent applications shall be confidential and shall be disclosed only as required for official purposes or with the consent of the inventor.

PART 7—EMPLOYEE INVENTIONS

Sec.
7.0 Who are employees.
7.1 Duty of employee to report inventions.
7.3 Determination as to domestic rights.
7.4 Option to acquire foreign rights.
7.7 Notice to employee of determination.
7.8 Employee's right of appeal.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 30814, May 9, 1980, unless otherwise noted.

§ 7.0 Who are employees.

As used in this part, the term "Government employee" means any officer or employee, civilian or military, except such part-time employees or part-time consultants as may be excluded therefrom by a determination made in writing by the head of the employee's office or constituent organization, pursuant to an exemption approved by the Commissioner of Patents that to include him or them would be impracticable or inequitable, given the reasons therefor. A person shall not be considered to be a part-time employee or part-time consultant for this purpose unless the terms of his employment contemplate that he shall work for less than the minimum number of hours per day, or less than a minimum number of days per week, or less than the minimum number of weeks per year, regularly required of full-time employees of his class.

§ 7.1 Duty of employee to report inventions.

Every Department employee is required to report to the Secretary in accordance with the procedures established therefor, every invention made by him (whether or not jointly with others) which bears any relation to his official duties or which was made in whole or in any part during working hours, or with any contribution of Government facilities, equipment, material, funds, or information, or of time or services of other Government employees on official duty.

§ 7.3 Determination as to domestic rights.

The determination of the ownership of the domestic right, title, and interest in and to an invention which is or may be patentable, made by a Government employee while under the administrative jurisdiction of the Department, will be made in writing by the Secretary in accordance with the provisions of Executive Order 10096 and Government-wide regulations issued thereunder by the Commissioner of Patents as follows:

(a) The Government as represented by the Secretary shall obtain the entire domestic right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (a) of this section), the Department, subject to the approval of the Commissioner, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b) of this section, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (1) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (2) to conduct or perform research, development work, or both, (3) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (4) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, falls within the provisions of paragraph (a) of this section, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b) of this section. Either presumption may be rebutted by a showing of the facts and circumstances and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the Government employee, subject to law.

(d) In any case wherein the Government neither (1) obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (a) of this section, nor (2) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of paragraph (b) of this section, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

§ 7.4 Option to acquire foreign rights.

In any case where it is determined that all domestic rights should be assigned to the Government, it shall further be determined, pursuant to Executive Order 9865 and Government-wide regulations issued thereunder, that the Government shall reserve an option to require the assignment of such rights in all or in any specified foreign countries. In case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government or the Government fails to exercise its option within such period of time as may be provided by regulations issued by the Commissioner of Patents, any application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

§ 7.7 Notice to employee of determination.

The employee-inventor shall be notified in writing of the Department's determination of the rights to his invention and of his right of appeal, if any. Notice need not be given if the employee stated in writing that he would agree to the determination of ownership which was in fact made.

§ 7.8 Employee's right of appeal.

An employee who is aggrieved by a determination of the Department may appeal to the Commissioner of Patents, pursuant to section 4(d) of Executive Order 10096, as amended by Executive Order 10930, and regulations issued thereunder, by filing a written appeal with the Commissioner, in duplicate, and a copy of the appeal with the Secretary within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving written notice of such determination.

PART 8—INVENTIONS RESULTING FROM RESEARCH GRANTS, FELLOWSHIP AWARDS, AND CONTRACTS FOR RESEARCH

Sec.

8.0 Policy.
8.1 Conditions to be included in research grants.
8.2 Determination as to domestic rights.
8.3 Licenses to the Government.
8.4 Option to acquire foreign rights.
8.5 Fellowships.
8.6 Contracts for research.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 30815, May 9, 1980, unless otherwise noted.

§ 8.0 Policy.

(a) The Department, as a matter of policy, takes the position that the results of research supported by grants of public moneys should be utilized in the manner which would best serve the public interest. It is believed that the public interest will in general be best served if inventive advances resulting therefrom are made freely available to the Government, to science, to industry, and to the general public.

(b) On the other hand, in some cases it may be advisable to permit a utilization of the patent process in order to foster an adequate commercial development to make a new invention widely available. Moreover, it is recognized that inventions frequently arise in the course of research activities which also receive substantial support from other sources, as well as from the Federal grant. It would not be consistent with the cooperative nature of such activities to attribute a particular invention primarily to support received from any one source. In all these cases the Department has a responsibility to see that the public use of the fruits of the research will not be unduly restricted or denied.

(c) The following conditions have been adopted to govern the treatment of inventions made in these various types of situations. They are designed to afford suitable protection to the public interest while giving appropriate recognition to the legitimate interests of others who have contributed to the invention.

§ 8.1 Conditions to be included in research grants.

Subject to legislative directives or Executive orders providing otherwise, all grants in aid of research shall provide as a condition that any invention arising out of the activities assisted by the grant shall be promptly and fully reported, and shall provide either:

(a) That the ownership and manner of disposition of all rights in and to such invention shall be subject to determination by the Secretary; or

(b) That the ownership and disposition of all domestic rights shall be left for determination by the grantee institution in accordance with the grantee's established policies and procedures, with such modifications as may be agreed upon and specified in the grant, provided the Secretary finds that these are such as to assure that the invention will be made available without unreasonable restrictions or excessive royalties, and provided the Government shall receive a royalty-free license, with a right to issue sublicenses as provided in § 8.3, under any patent applied for or obtained upon the invention.

(c) Wherever practicable, any arrangement with the grantee pursuant to paragraph (b) of this section shall provide in accordance with Executive Order 9865 that there be reserved to the Government an option, for a period to be prescribed, to file foreign patent applications upon the invention.

§ 8.2 Determination as to domestic rights.

Rights in any invention not subject to disposition by the grantee pursuant to § 8.1(b) are for determination by the Secretary as follows:

(a) If he finds that there is adequate assurance that the invention will either be effectively dedicated to the public, or that any patent which may be obtained thereunder will be generally available for royalty-free and nonexclusive licensing, the effectuation of these results may be left to the grantee.

(b) If he finds that the invention will thereby be more adequately and quickly developed for widest use and that there are satisfactory safeguards against unreasonable royalties and repressive practices, the invention may be assigned to a competent organization for development and administration for the term of the patent or such lesser period as may be deemed necessary.

(c) If he finds that the interest of another contributing Government agency is paramount to the interest of the Department of Education or when otherwise legally required or in the public interest, the invention may be left for disposition by that agency in accordance with its own policy.

(d) In all other cases, he shall require that all domestic rights in the invention shall be assigned to the United States unless he determines that the invention is of such doubtful importance or the Government's equity in the invention is so minor that protective measures, except as provided in § 8.3, are not necessary in the public interest.

§ 8.3 Licenses to the Government.

Any arrangement or determination as to the disposition of rights in inventions pursuant to §§ 8.1, 8.2, 8.5 or § 8.6 shall require that there be reserved under any patent application or patent thereon, domestic or foreign, a nonexclusive, irrevocable, royalty-free license to the Government with power to sublicense for all governmental purposes.

§ 8.4 Option to acquire foreign rights.

In any case where it is determined that all domestic rights should be assigned to the Government, there shall be reserved to the Government, pursuant to Executive Order 9865 (3 CFR, 1943-1948 Comp., p. 480) and Government-wide regulations issued thereunder, an option to require the assignment of all rights in the invention in all or in any specified foreign countries. In any case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government, or the Government fails to exercise its option within such period of time as may be provided by regulations issued by the Chairman of the Government Patents Board any application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the power to sublicense for all governmental purposes.

§ 8.5 Fellowships.

In the discretion of the Secretary the award of a fellowship to a person not a Government employee may provide for the reporting of any invention made during the term thereof, and for its disposition in accordance with the provisions of § 8.1(a) or for its disposition by the institution at which the research was performed in accordance with its established policies, if applicable to such an invention, which meet the requirements of paragraph (b) of such section.

§ 8.6 Contracts for research.

(a) Contracts for research, with other than nonprofit institutions, shall provide that any invention first conceived or actually reduced to practice in the course of the performance of the contract shall be promptly and fully reported to the Secretary for determination by him as to the manner of disposition of all rights in and to such invention, including the right to require assignment of all rights to the United States or dedication to the public. In the exercise of this power the organization head will be guided by the policy specified in § 8.2 with respect to grants.

(b) Contracts for research with nonprofit institutions shall contain provisions as in paragraph (a) of this section except that, if it is determined that the institution's policies and procedures are acceptable as meeting the requirements of § 8.1(b) with respect to grants, the contract may provide, with such special stipulations in the contract as may be deemed necessary in the public interest, for leaving the ownership and disposition of all domestic rights for determination by the contracting institution in accordance with such policies and procedures.

PART 10—DEPARTMENTAL FELLOWSHIP REVIEW PANEL

Sec.
10.1 Purpose.
10.2 Definitions.
10.3 Departmental Fellowship Review Panel; Departmental Fellowship Review Board; in general.
10.4 Procedural safeguards.
10.5 Hearing before Board or a Hearing Officer.
10.6 Preliminary decision; initial decision; final decision.
10.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 30816, May 9, 1980, unless otherwise noted.

§ 10.1 Purpose.

This part establishes a Departmental Fellowship Review Panel, from which Departmental Fellowship Review Boards will be selected, for the purpose of providing hearings where an opportunity for such hearing is provided for in cases where there is substantial reason for a belief that a fellowship (or traineeship) award should be denied or discontinued on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of, the award.

§ 10.2 Definitions.

(a) "Departmental Fellowship Review Panel" (also referred to as "Panel") means a panel of 12 members selected by the Secretary, for such terms as may be designated by him, which shall include at least four representatives of the legal discipline and at least four representatives of the field of higher education. At least eight members of the Panel shall be selected from sources outside the Department.

(b) "Panel Chairman" means one of the Panel members designated by the Secretary to serve as Chairman of the Panel for such time as shall be indicated in the designation.

(c) "Departmental Fellowship Review Board" (also referred to as "Board") means not less than three members of the Panel designated by the Panel Chairman for the consideration of one or more cases. At least two Board members shall be persons other than employees of the Department, and the Board shall include at least one representative of the legal discipline and one from the field of higher education. In no event shall anyone who participated in any previous consideration of a case be eligible to serve on a board in connection with its consideration of that case. The Panel Chairman may designate himself as one of the members of a Board or as the Chairman thereof.

(d) "Board Chairman" means a member of a Departmental Fellowship Review Board who has been designated as Chairman of such Board by the Panel Chairman.

(e) "Preliminary decision" means the recommended decision, including findings of fact and conclusions reached in the light of the applicable criteria, prepared by a Hearing Officer and submitted to the Board.

(f) "Initial decision" means the recommended decision of the Board, which shall include (1) findings of fact and conclusions reached in the light of the applicable criteria and, when applicable, (2) the reasons for any changes or modifications made by the Board in a preliminary decision.

(g) The words "Department" and "Departmental" refer to the U.S. Department of Education.

(h) "Secretary" means the Secretary of Education.

§ 10.3 Departmental Fellowship Review Panel; Departmental Fellowship Review Board; in general.

Upon receipt of a submission of a case, the Chairman of the Departmental Fellowship Review Panel shall refer the case to a Departmental Fellowship Review Board, constituted as provided in § 10.2(c), for the purpose of recommending to the Secretary, on the basis of a preponderance of the evidence, after affording to the individual concerned an opportunity for a fair hearing, whether the fellowship (or traineeship) award should be denied or discontinued on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of the award. The Board's recommendation shall be embodied in an initial decision in accordance with § 10.2(h).

§ 10.4 Procedural safeguards.

The Board shall take appropriate steps to afford the individual concerned an opportunity for a fair hearing, which shall include provisions designed to assure to such individual the following:

(a) Sufficient notice of the issues to be considered;

(b) An opportunity to be represented by counsel;

(c) Disclosure of as much of all matters of an evidentiary nature as may be permitted within the framework of applicable laws, regulations, and other requirements (e.g., those pertaining to FBI reports);

(d) An opportunity to appear in person (and to present witnesses in his behalf) or, at the option of the individual concerned, to submit his case in whole or in part in writing (e.g., through interrogatories, affidavits, exhibits, etc.);

(e) An opportunity to cross-examine persons either orally or through written interrogatories, to the extent provided by Executive Order 10865 of February 20, 1960 (3 CFR, 1959-1963 Comp., p. 398; relating to safeguarding of classified information within industry), except that functions vested by that Order in the head of a department shall be performed by the head of the appropriate operating agency;

(f) An option to the individual concerned to have the hearing open or closed to the public;

(g) A determination of the place of the hearing which takes into consideration the convenience of the individual concerned and any witnesses who might be testifying at the hearing.

§ 10.5 Hearing before Board or a Hearing Officer.

The hearing may be conducted, as determined by the Board Chairman, before the full Board as the hearing body, or before a Hearing Officer. The Hearing Officer may be (a) one of the members of the Board or (b) a nonmember who is qualified as a Hearing Officer under the Administrative Procedure Act.

§ 10.6 Preliminary decision; initial decision; final decision.

When the hearing is conducted by the Board itself, it shall prepare an initial decision for submission to the Secretary. When the hearing is conducted before a Hearing Officer, the Hearing Officer shall prepare a preliminary decision for submission to the Board. The preliminary decision shall be reviewed by the Board and shall become the initial decision of the Board unless, and to the extent that, it is changed or modified by the Board. The initial decision of the Board shall be transmitted to the Secretary, and shall become the final decision of the Secretary, unless, and to the extent that, it is changed or modified by the Secretary.

§ 10.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

Copies of the preliminary decision, if any, and of the initial decision shall be mailed promptly by the Hearing Officer or the Board, as the case may be, to the individual, or his counsel, with a notice affording him an opportunity to submit written comments thereon, within a specified reasonable time, to the Board in the case of a preliminary decision, and to the Secretary in the case of an initial decision.

PART 11—COMMITTEE MANAGEMENT

Sec.

11.1 Scope.
11.2 Definitions.
11.3 General policies.
11.4 Guidelines for the creation and renewal of advisory committees.
11.5 Operation of advisory committees.
11.6 Administrative remedies.

AUTHORITY: 86 Stat. 770, 5 U.S.C. App. I et seq.

SOURCE: 45 FR 30817, May 9, 1980, unless otherwise noted.

§ 11.1 Scope.

(a) This part contains the Department's regulations implementing the Federal Advisory Committee Act.

(b) The regulations provided under this part apply to all advisory committees providing advice to the Department or any of its officials except to the extent that statutory provisions governing an advisory committee may specifically provide otherwise.

§ 11.2 Definitions.

(a) "Act" means the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. I et seq.).

(b) "Advisory committee," subject to exclusions described in paragraph (b)(3) of this section means any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or other subgroup thereof which is established by statute or reorganization plan; or established or utilized by the Department in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

(1) Although no single factor is determinative in deciding whether a group is an advisory committee, the following factors will be considered:

(i) Fixed membership including at least one person who is not a full-time Federal employee;

(ii) Establishment by a Federal official or law; or if not Federally established, the initiative for its use as an advisory body for the Federal Government comes from a Federal official rather than from a private group;

(iii) A purpose of providing advice regarding a particular subject or particular subjects;

(iv) An organizational structure (e.g.), officers and a staff;

(v) Regular or periodic meetings.

(2) The functions of an advisory committee are to be solely advisory. Where a group provides some advice to the Department, but the group's advisory function is incidental and inseparable from other (e.g., operational) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(3) Groups excluded from the effect of the provisions of this part include:

(i) Any committee which is composed wholly of full-time officers or employees of the Federal Government;

(ii) Any committee which is exclusively operational in nature (e.g., has functions which include making or implementing decisions, as opposed to the offerings of advice or recommendations);

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(iv) Any state or local committee or similar group established to advise State or local officials or agencies;

(v) The term "advisory committee" is not intended to include persons or organizations which have contractual relationships with the Department except in those cases where the criteria described in paragraph (b)(1) of this section are present.

(c) "Department" means the Department of Education.

(d) "Secretary" means the Secretary of Education.

(e) "OMB Secretariat" is the office within the Office of Management and Budget to administer the provisions of OMB Circular A-63.

(f) "Presidential advisory committee" means an advisory committee which advises the President.

(g) "Statutory advisory committee" is one established by the Congress or required to be established by the Congress.

(h) "Non-statutory advisory committee" is one established by the President or other Federal officer, including a committee which was authorized by, but not established by or required to be established by statute.

§ 11.3 General policies.

(a) In interpreting this part, Department officials shall be guided by the Act and the intent of Congress in enacting the Act. These considerations include:

(1) Limiting the number of advisory committees to those that are essential and terminating any committee not fulfilling its purpose;

(2) Insuring effective use of advisory committees and their recommendations, while assuring that decisionmaking authority is retained by the responsible Department officers;

(3) Providing clear goals, standards and uniform procedures with respect to creation, operation, and duration of committees;

(4) Insuring that adequate information is provided to the President, the Congress and the public regarding advisory committees;

(5) Insuring adequate opportunities for access by the public to advisory committee meetings; and

(6) Providing uniform requirements for advisory committee reports and their availability to the public.

(b) Department officials shall be guided by the ED Standards of Conduct (34 CFR Part 73), the Federal Personnel Manual, and the Federal Conflict of Interest statutes (18 U.S.C.

201 et seq.), in preventing conflicts of interest or appearance of conflicts of interest on the part of Department employees concerned with advisory committees, advisory committee members and staff, and consultants and experts concerned with advisory committees.

§ 11.4 Guidelines for the creation and renewal of advisory committees.

(a) Advisory committees shall be established by the Department only when they are determined to be essential. Their number shall be kept to the minimum necessary. They shall be terminated when they are no longer carrying out the purposes for which they were established or such purposes are no longer regarded as necessary to the operation of the department.

(b) No advisory committee shall be established or renewed unless such establishment or renewal is specifically authorized by statute, or established by statute or the President, or determined as a matter of formal record by the Secretary (after consultation with the OMB Secretariat) to be in the public interest in connection with the performance of duties imposed on the Department by law. In seeking such determination by the Secretary, the responsible official requesting establishment or continuance of an advisory committee shall make a request in writing to the Secretary. The request shall describe the nature or purpose of the proposed committee; the reasons why it is needed, including an explanation of why the functions of the proposed committee cannot be performed by Department employees, by an existing committee, or by some other means; and a description of the plan to attain balanced membership on the proposed committee in terms of the points of view to be represented, functions to be performed, and expected participation by women and minorities.

(c) No advisory committee shall meet or take any action until:

(1) In the case of establishment or renewal, in appropriate instances, the OMB Secretariat has been consulted.

(2) A formal charter has been approved by the Secretary;

(3) Public announcement of its establishment or renewal has been made in the FEDERAL REGISTER, at least fifteen days prior to the filing of the committee's charter.

(d) Copies of the charter shall be provided by the Department to the appropriate standing committees of the Senate and House of Representatives and to the Library of Congress. In the case of Presidential Committees a copy of the charter shall also be provided to the Office of Management and Budget. The charter shall be in a form prescribed by the Department Committee Management Officer and shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purpose;

(4) The official to whom the committee reports;

(5) The person responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(7) The estimated annual operating costs in dollars and man-years for such committee;

(8) The estimated number and frequency of committee meetings;

(9) The committee's termination date, if less than two years from the date of the committee's establishment; and

(10) The date the charter is approved by the Secretary.

(e) With regard to subgroups, if all of its members are members of the parent committee, requisite information may be set forth in the charter of the parent committee. In the event a subgroup includes members who are not all drawn from the parent committee, it shall be separately chartered. In addition, if not incorporated in the charter of the parent committee, subgroups shall be separately chartered.

(f) No advisory committee shall be created if its functions could otherwise be performed effectively within the Department or by an existing committee.

(g) The membership of an advisory committee shall be fairly balanced in terms of the points of view represented and the committee's functions. Appropriate safeguards shall be taken to assure that an advisory committee's advice and recommendations will not be inappropriately influenced by any special interest, but shall instead be the result of the advisory committee's independent judgment.

(h) In the selection of committee members, there shall be no discrimination on the basis of race, color, national origin, religion, age, sex, or handicap.

(i) Each advisory committee shall prepare an annual report describing its membership, functions, recommendations and other actions. A copy of the report shall be submitted to the Department Committee Management Officer who shall make copies of them available to the public, upon request. In addition, a copy of the report shall be filed with the Department's Library and made available to the public. Notice of the availability of the Annual Report shall be published in the FEDERAL REGISTER no later than sixty days after its completion. Such notice shall indicate its availability to the public.

(j) Unless specifically provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. For purposes of this provision, "Presidential directive" refers to an executive order, executive memorandum or an OMB directive.

(k) Decisions regarding actions or policies relating to matters dealt with by a Department advisory committee shall be made solely by Department officials.

(l) Except for committees created by Congress with a duration in excess of two years, no Department advisory committee shall continue in existence for a period of more than two years from its establishment unless renewed prior to the date of its scheduled termination by action of the Congress, the President, or the Secretary as appropriate. In the case of a committee continued by the Congress or the President beyond its scheduled termination date, a charter shall be approved by the Secretary and the requirements set forth in paragraph (c) of this section complied with before any meeting is held. To renew a committee the Secretary shall determine that such renewal is necessary and inform the OMB Secretariat of his determination and the reasons for it. Renewal determinations shall be made not more than sixty days before the scheduled date of termination. If the OMB Secretariat concurs, the Department Committee Management Officer shall notify the responsible Department officials who shall publish notice of the renewal in the FEDERAL REGISTER. A new charter shall also be approved by the Secretary.

(m) Any advisory committee which is renewed may continue for no more than a two-year period unless prior to the expiration of that period it is renewed for another two-year period in accord with the above provisions.

§ 11.5 Operation of advisory committees.

(a) *Meetings.* The provisions of this section shall apply to meetings of all Department advisory committees and all subgroups.

(1) *Calling of meetings and agenda.* (i) No advisory committee shall hold any meetings except at the call of or with the advance approval of the designated Department official.

(ii) No meeting shall be held in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership, including ex officio members. In addition, such members shall have full voting rights.

(iii) Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the designated Department official. Ordinarily, copies of the agenda shall be distributed to the members of the committee prior to the date of the meeting. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters which are within the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b).

(2) *Notice of meeting.* (i) Except when the Director of the Office of Management and Budget determines otherwise for reasons of national security, or except as otherwise provided herein, notice of each advisory committee meeting shall be published in the FEDERAL REGISTER at least fifteen days prior to the meeting. The fact that a meeting is closed to the public pursuant to paragraph 10(d) of Pub. L. 92-463 shall not affect the foregoing requirement.

(A) The notice shall state the name of the advisory committee, the time and place of the meeting, and the purposes of the meeting and shall include a summary of the agenda.

(B) The notice shall state the extent to which the public will be permitted to attend or participate in the meeting. If the meeting will be closed to the public, the notice shall also state the reasons for closing, including appropriate citation to the Freedom of Information Act.

(ii) In addition to notice in the FEDERAL REGISTER, the Executive Secretary of each advisory committee shall maintain a list of persons and organizations who have requested to be notified of all meetings and notify them by mail in advance of any meeting. Other forms of notice, such as press releases and notices in professional journals shall be used to the extent practicable.

(iii) Meetings may be held only in emergency situations unless notice of the meeting has been published in the FEDERAL REGISTER at least fifteen days prior to the meeting. Such meetings shall be kept to a minimum, and whenever feasible, rescheduled for a later date. When a meeting must be called without fifteen days notice being given, the following steps shall be taken, to the extent possible:

(A) Advance notice shall be published in the FEDERAL REGISTER.

(B) Other forms of notice shall be utilized whenever practicable.

(C) In the case of meeting notices published in accordance with paragraphs (a)(2)(iii) and (a) and (b) of this section, the notice shall contain an explanation for the failure to give fifteen days notice.

(3) *Public participation at meetings.* (i) Subject to the exceptions described in paragraph (a)(6) of this section each advisory committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee.

(ii) The Executive Secretary of each committee shall, with respect to any advisory committee meeting, all or part of which is open to the public, assure compliance with the following rules:

(A) Meetings shall be held at reasonable times and places that are reasonably accessible to members of the public. Whenever feasible, Government facilities shall be used and meetings held in places involving the least expense to the Department.

(B) The size of the meeting room shall be reasonable, considering such factors as the size of the advisory committee, the number of members of the public expected to seek to attend, and the resources and facilities available to the Department.

(C) Any member of the public who wishes to do so shall be permitted to file a written statement with the committee, before or after a meeting.

(D) To the extent that the time available for a meeting permits, interested persons may be permitted to present oral statements. Any person seeking to present an oral statement to a committee may be required to obtain advance approval for such participation from the committee chairman or the committee's Executive Secretary.

(E) Participation by members of the public at committee meetings or questioning of committee members or other participants shall only be permitted with the authorization of the committee chairman.

(4) *Minutes and transcripts of meetings.* (i) Detailed minutes shall be kept of each meeting of each advisory committee, including meetings of formal and informal subgroups. The Executive Secretary of each advisory committee shall keep the minutes or designate some person to keep the minutes.

Minutes need not be kept if a verbatim transcript is made.

(ii) The minutes shall include at least the following: The time and place of the meeting; a list of advisory committee members and staff and full-time Federal employees present at the meeting; a detailed summary of matters discussed, including different positions advanced by members and conclusions reached by the committee; copies of all reports received, issued, or approved by the advisory committee; an explanation of the extent to which the meeting was open to the public; and explanation of the extent of public participation, including a list of members of the public who presented oral or written statements; and an estimate of the number of members of the public who attended the meeting.

(iii) Within a reasonable time after the meeting the minutes shall be completed and submitted to the chairman of the advisory committee.

(iv) Within a reasonable time after receipt of the minutes the chairman of the advisory committee shall certify to the accuracy of the minutes and submit them to the Executive Secretary for submission to the official advised by the committee.

(5) *Designated Department employee.* (i) Each advisory committee meeting shall be attended by a Department employee designated by the Department official responsible for the Committee. Ordinarily, the employee so designated shall serve the advisory committee on a continuing basis.

(ii) No advisory committee shall conduct a meeting in the absence of the designated Department employee. If simultaneous subgroup meetings are to be held, each subgroup shall have a designated Department employee in attendance.

(iii) The designated Department employee is authorized to adjourn any advisory committee meeting, whenever he determines adjournment to be in the public interest. Inter alia, the designated Department employee shall adjourn the meeting in the event of unwarranted departure from a meeting's agenda.

(6) *Closing advisory committee meetings.* (i) Subsection 10(d) of the Act provides that the provisions concerning open meetings and public participation shall not apply to any advisory committee which the President, or the head of the department to which the advisory committee reports, determines is concerned with matters listed in 5 U.S.C. 552b(c). Department officials shall be guided by the policies set forth in that regulation in making determinations to close meetings. In applying the provisions of 5 U.S.C. 552b(c) to advisory committee meetings, liberal interpretations shall be assumed with respect to the openness of such meetings. Any determination to close a meeting (or portion) shall restrict such closing to the shortest reasonable time.

,(ii) When an advisory committee seeks to have a meeting (or portion) closed, the Executive Secretary shall make a request in writing for a determination by the Secretary. Such a request shall set forth the reasons why the meeting (or portion) should be closed. Whenever practical, the request shall be submitted at least sixty days before the scheduled date of the meeting.

(iii) If the Secretary finds the request to be warranted and in accord with the policy of the Act and the Freedom of Information Act, the request shall be granted. The determination made by the Secretary shall be in writing and contain specific reasons for closing the meeting (or portion).

(iv) If a meeting is to be held for the consideration of several separable matters, not all of which are within the exemptions of 5 U.S.C. 552b(c), only the portion of the meeting dealing with exempt matters may be closed.

(v) When part of a meeting is to be closed, the agenda shall be arranged to facilitate attendance by the public at the open portion of the meeting.

(vi) When a meeting (or portion) is closed, only members of the committee, its staff, and Federal employees shall be permitted to attend.

(vii) When a meeting (or portion) is closed, members of the advisory committee shall not disclose the matters discussed except to other members of the advisory committee, the staff of the advisory committee or Department employees.

(viii) The Department Committee Management Officer may review, after the meeting, the appropriateness of any determination to close a meeting (or portion) and require that corrective action be taken with respect to the particular advisory committee or general procedures concerning the closing of meetings.

(ix) When a meeting (or portion) is closed, and detailed minutes are not to be made available in their entirety to the public, the advisory committee shall prepare and make available to the public within fourteen days of the close of the meeting a summary of its activities and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552b(c). Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the FEDERAL REGISTER.

(b) *Access to records.* (1) All records, reports, and other documents of each advisory committee shall be available for public inspection and copying pursuant to the Department's public information regulation. Documents referred to herein include the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda or other documents which were made available to or prepared for or by each advisory committee.

(2) Advisory committee records determined to be available for public inspection are to be made available for inspection and copying at a single location in the offices of the advisory committee or the Department organizational component to which the advisory committee reports. The advisory committee or appropriate Department organizational component shall make available to any person copies of transcripts of committee proceedings or meetings at cost determined in accordance with the appropriate fee schedule.

§ 11.6 Administrative remedies.

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review in accord with the Department's Freedom of Information Act regulation.

(b) Any person whose request for access to an advisory committee meeting is denied after publication of the notice of the meeting in the FEDERAL REGISTER may appeal to the appropriate official designated at 34 CFR 5.82.

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR EDUCATIONAL PURPOSES

Sec.

12.1 Definitions.
12.2 Scope.
12.3 General policies.
12.4 Limitations.
12.5 Awards.
12.6 Notice of available property.
12.7 Applications for surplus real property.
12.8 Assignment of surplus real property.
12.9 General disposal terms and conditions.
12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).
12.11 Special terms and conditions.
12.12 Utilization.
12.13 Form of conveyance.
12.14 Compliance inspections and reports.
12.15 Reports to Congress.

Exhibit A—Public Benefit Allowance for Transfer of Real Property for Educational Purposes

AUTHORITY: Sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484.

SOURCE: 45 FR 30820, May 9, 1980, unless otherwise noted.

§ 12.1 Definitions.

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Education, State University, or the Middle States Association of College and Secondary Schools. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that educational organizations or programs meet minimum acceptance standards. A college, university, or secondary school may be said to be accredited if the credits issued by it are and have been accepted for transfer purposes by no fewer than three accredited colleges, universities, or secondary schools not connected or associated with it.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for educational purposes.

(e) "Department" means the U.S. Department of Education.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for educational purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for educational purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for educational purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for educational purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Education.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

§ 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for educational purposes, as provided for in section 203(k) of the Act.

§ 12.3 General policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for educational purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported educational institutions, and nonprofit educational institutions which have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for educational purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for educational purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9.

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide elementary, secondary, post secondary, vocational, or specialized education, public library services, or similar programs which are primarily educational in character such as child development programs and adult education programs (including such programs for older Americans). Services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

§ 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

§ 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

§ 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for educational uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible educational purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

§ 12.7 Applications for surplus real property.

Applications for surplus real property for educational purposes shall be made to the Department in accordance with the notice of availability.

§ 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for educational purposes will be furnished the Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for educational purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

§ 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to educational purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for educational purposes. The computation of such public benefit allowances will be in accordance with Exhibits A and B attached hereto and made a part hereof.

(b) A transfer of surplus real property for educational purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93-234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed, or, in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the

decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the educational use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the educational use for which the property was leased. With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property. Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be re-transferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the Untied States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for thirty (30) years for land with or without improvements; and for facilities being acquired

separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferee, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) of this section for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For the purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

§ 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for educational purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archaeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed, for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by the Director of the Office of Federal Property Assistance, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) that the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal agency.

§ 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit educational organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old facilities, the financing of which must be accomplished through issuance of revenue bonds or other financing methods having terms inconsistent with the terms and conditions of transfer prescribed in § 12.9 (c), (d), and (e) the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for educational purposes.

§ 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other educational user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in § 12.9(d), except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in § 12.3(c).

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

§ 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the disposal or lease terms and conditions set forth in this part and such other terms and conditions as may be appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

§ 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

§ 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

EXHIBIT A—PUBLIC BENEFIT ALLOWANCE FOR TRANSFER OF REAL PROPERTY FOR EDUCATIONAL PURPOSES [1]

Classification	Percent allowed													
	Basic public benefit allowance	Organization allowances								Utilization allowances				Maximum public benefit allowance
		Tax support	Accreditation	Federal impact	Public service training	Hardship	Inadequacy of existing school plant facilities			Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	
							10–25%	26–50%	51–100%					
Elementary and high schools	50	20	20	10	10	10	10	20	30	10	10	10	10	100
Colleges and universities	50	20	20		10	10	10	20	30	10	10	10	10	100
Specialized schools	50	20	20		10	10	10	20	30	10	10	10	10	100
Research and related activities	[2] 100													[2] 100
Public libraries and educational museums	[2] 100													[2] 100
School outdoor education	50	20	20							10	[3] 10			100
Central administrative and/or service centers	100 [4] 80													100 [4] 80

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[1] This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted

[2] Applicable when this is the primary use to be made of the property. The public benefit allowance for the over-all program is applicable when such facilities are conveyed as a minor component of other facilities.

[3] This 10% may include recognition of an approvable recreation program operated in such a way as to be accessible to the public yet entirely compatible with, but subordinate to, the educational program.

[4] The maximum allowance available to eligible private, non-profit institutions. Tax-supported institutions receive 100% allowance.

PART 15—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Subpart A—General

Sec.
15.1 Purpose.
15.2 Background.
15.3 Effective date.
15.4 Definitions.
15.5 Applicability.
15.6 Categorical exceptions.

Subpart B—Assurances from State Agencies as a Condition Precedent to Participation in Federally Assisted Programs

15.10 State agency program assurances.

Subpart C—Assurance of Adequate Replacement Housing Prior to Displacement by a Project

15.15 Project assurance of housing availability.
15.16 Housing provided as a last resort.
15.17 Loans for planning and preliminary expenses.

Subpart D—Actual Moving and Related Expenses and Losses

15.21 Eligibility.
15.22 Application.
15.23 Allowable moving and related expenses.
15.24 Direct losses incurred in moving or discontinuing a business or farm operation.
15.25 Allowable expenses in connection with searching for a replacement location for a business or farm operation.
15.26 Nonallowable moving expenses and losses.

Subpart E—Payments in Lieu of Actual Moving and Related Expenses

15.30 Use of schedules in connection with displacement from dwelling.
15.31 Fixed payment for person displaced from his place of business or farm operation.

Subpart F—Replacement Housing Payments

15.35 Payments for replacement housing costs to homeowners.
15.36 Limitation on payments for replacement housing costs.
15.37 Payments for additional interest costs incurred.
15.38 Mortgage insurance.
15.39 Payments to tenants and others for the rental of replacement dwellings.

Sec.
15.40 Payments to tenants and others for the purchase of replacement dwellings.
15.41 Notice to tenants of initiation of negotiations for the property.

Subpart G—Relocation Assistance Advisory Services

15.45 Relocation assistance advisory services.

Subpart H—Federally Assisted Programs

15.50 Assurances from State agencies.
15.51 Unsatisfactory assurances.
15.52 Records.
15.53 State agency contracts for relocation assistance.
15.54 Appeals.
15.55 Funding of the cost of payments and assistance.
15.56 Advance payments.

Subpart I—Real Property Acquisition Policies

15.60 Just compensation.
15.61 Negotiations for the acquisition of real property.
15.62 Notices to tenants and owners.
15.63 Payment of certain expenses.

Subpart J—Relocation Assistance Payments as Income

15.67 Relocation payments and assistance as income or resources for purpose of other laws.

AUTHORITY: Sec. 213, 84 Stat. 1900, 42 U.S.C. 4633.

SOURCE: 45 FR 30825, May 9, 1980, unless otherwise noted.

Subpart A—General

§ 15.1 Purpose.

The purpose of the regulations in this part is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) and the guidelines therefor in OMB Circular No. A-103, of May 1, 1972.

§ 15.2 Background

The Act provides a uniform policy for the fair and equitable treatment of owners and tenants of real property who are displaced by Federal or federally assisted programs or projects or whose real property or interests in real property is taken for or as a direct result of such programs or projects. The need for such a uniform policy arises from the growing impact on such persons of such programs and projects as they evolve to meet the public needs of a growing, and increasingly urban population. Title II of the Act provides for a program of relocation payments, of relocation assistance (including advisory services), of assurances that prior to the displacement of persons comparable quality, decent, safe, and sanitary replacement housing will be available for them, and of economic adjustments and other assistance to owners and tenants displaced from their homes, businesses, or farm operations. Title III of the Act provides a uniform policy with respect to real property acquisitions for or as a direct result of Federal or federally assisted programs or projects.

§ 15.3 Effective date.

Relocation payments and assistance provided for by title II of the Act are to be made to all persons otherwise eligible who are displaced on or after January 2, 1971; the real property acquisition policies provided by title III of the Act apply to real property acquisitions on or after January 2, 1971. Until July 1, 1972, the provisions of both those titles of the Act applied to State programs and projects receiving Federal financial assistance, to the extent that the State was under its laws able to comply with those titles. On July 2, 1972, the provisions of title II and the provisions of sections 303 and 304 of title III, relating to incidental expenses and litigation expenses in connection with real property acquisitions, became fully applicable to State programs and projects receiving Federal financial assistance; and the provisions of sections 301 and 302 of the Act, relating to real property acquisition policies and to practices relating to the acquisition of buildings, structures, and improvements, continue to guide State programs and projects receiving Federal financial assistance, but only to the greatest extent practicable under State law.

§ 15.4 Definitions.

(a) The "Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646), approved January 2, 1971 (42 U.S.C. 4601-4655).

(b) "Actually occupied" means openly and visibly occupied by the owner or tenant or his immediate family more than temporarily or casually, but does not call for constant personal presence nor foreclose temporary absence occasioned by some casualty or for business or pleasure.

(c) "Business" means any lawful activity, except a farm operation, including an activity by a nonprofit organization, conducted primarily: (1) For the purchase, sale, lease, or rental of personal or real property or for the manufacturing, processing, or marketing of products, commodities, or other items of personal property, (2) for the sale of services to the public, or (3) but solely for purposes of entitlement to the cost of actual moving and related expenses, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, other personal property, or services by the erection and maintenance of outdoor advertising displays, whether or not such displays are located on the premises on which any of such activities are conducted. The term includes only those activities which are conducted regularly on a bona fide basis, and does not include activities conducted as avocations.

(d) "The Department" means the U.S. Department of Education.

(e) "Displaced person" means any person who moves from real property, or moves his personal property from real property, as a result of the acquisition, in whole or in part, of such real property, or as a result of the written order of the acquiring agency to vacate such real property for a program or project undertaken by the Department, or by a State agency for or as a direct result of a program or project for which it receives Federal financial assistance from the Department. It also means, but solely for purposes of entitlement to the actual cost of moving and related expenses or to a sum in lieu thereof or of entitlement to relocation assistance advisory services, such a person who so moves from other real property, or so moves his personal property from other real property, as a result of the acquisition for or as a direct result of such a program or project of, or the written order of the acquiring agency to vacate, such other real property on which such person conducts a business or farm operation.

(f) "Displacing agency" means the Department when it acquires real property or gives a written notice to a person to vacate real property for a program or project undertaken by the Department, or a State agency so acting for or as a direct result of a program or project for which financial assistance is provided by the Department and which results in the displacement of a person.

(g) "Dwelling" means the structure constituting the place of permanent, or customary and usual, abode of a person. It includes a single-family dwelling; a multifamily building; a condominium or cooperative housing project; or a mobile home or other residential unit.

(h) "Family" means two or more individuals who are related by blood, adoption, marriage, or guardianship, or one of whom stands in loco parentis to another and who live together as a family unit. However, individuals who live together as a family unit as if they were so related may be regarded as a single family.

(i) "Farm operation" means any activity conducted solely or primarily for the production of one or more raw agricultural products or commodities, including timber, for sale or home use, and customarily producing such agricultural products or commodities in quantities sufficient to be capable of contributing materially to the operator's support.

(j) "Federal financial assistance" means a grant, loan, or contribution provided by the Department, whether in the form of a grant, contract, or agreement and without regard to whether the financial assistance applies to the acquisition of real property required for, or as a direct result of, the project being assisted, but does not mean any annual payment or capital loan to the District of Columbia or any Federal guarantee or insurance.

(k) "Financial means" means the ability of a displaced person to afford the rental or price of a replacement dwelling determined to be available for rent or sale to such a displaced person. For this purpose, the rental or housing cost (e.g., mortgage payments, insurance for the dwelling unit, property taxes, and other related recurring expenses) which the displaced person will be required to pay for the replacement dwelling should not normally exceed the fair rental or value of the acquired dwelling by more than 20 percent and, for purposes of housing referrals, the rental value should not, except in unusual circumstances, exceed 25 percent of the gross income of the displaced person including supplemental payments made by public agencies.

(l) "Initiation of negotiations" means the first personal contact by or on behalf of the displacing agency with the owner of real property or with his representative at which the price of the real property is discussed.

(m) "Mortgage" means a deed of trust or lien commonly used in the State in which the real property is located to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(n) "Nonprofit organization" means a partnership, corporation, or association no part of the profits of which inures, or is intended to inure, to the benefit of any private shareholder or individual.

(o) "Owner" means a person who holds a fee simple title, a life estate, or a 99-year lease in real property, or an interest in a cooperative project which includes the right of occupancy, or who is possessed of such other proprietary interest in real property as, in the judgment of the Secretary, warrants being treated as ownership. In the case of a person who has succeeded to any of the foregoing interests in real property by devise, bequest, inheritance, or operation of law, the tenure of the succeeding owner includes the tenure of the preceding owner in relation to ownership but not in relation to occupancy.

(p) "Person" means any individual, partnership, corporation, or association.

(q) "Secretary" means the U.S. Secretary of Education.

(r) "State" means any of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, or any political subdivision thereof.

(s) "State agency" means any department, agency, or instrumentality of a State or any department, agency, or instrumentality of two or more States, and includes a State itself.

§ 15.5 Applicability.

(a) This part applies, in relation to title II of the Act, to all direct projects of the Department which have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property.

(b) This part applies, in relation to title II of the Act, to all projects of State agencies receiving financial assistance in whole or in part from the Department which projects have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property. For this purpose, it is immaterial whether Federal funds are used by the State agency for the acquisition of such real property as is required for, or as a direct result of, the project.

§ 15.6 Categorical exceptions.

This part does not apply to federally assisted projects of those entities, such as private entities, that do not meet the definition of a State agency in § 15.4(s), except when such an entity is acting as an agent or contractor of a State agency, or of the Department, in the discharge of its responsibilities.

Subpart B—Assurances From State Agencies as a Condition Precedent to Participation in Federally Assisted Programs

§ 15.10 State agency program assurances.

(a) The Department will not approve any grant to, or contract or agreement with, a State agency under a program for which financial assistance will be available from the Department to pay all or part of the cost and which will result in the acquisition of real property or an interest therein and in the displacement on or after January 2, 1971, of any person, until satisfactory assurances are received from that State agency that fair and reasonable relocation payments and assistance will be provided by the displacing agency under title II of the Act and this part; that relocation assistance programs offering the advisory services described in section 205 of the Act and this part will be provided to such displaced persons; and in connection with individual projects that, within a reasonable period of time prior to the displacement of persons, decent, safe, and sanitary dwellings will be available, as provided for in § 15.15 to persons so displaced by that project.

(b) In connection with programs which result in the acquisition of real property, whether or not involving the displacement of persons, the Department will also require, as a condition precedent to providing financial assistance, assurances that expenses incidental to the transfer of title, and litigation expenses in the event the real property is not in fact so acquired, will be paid as provided for in sections 303 and 304 of the Act, and that the State agency will be guided, to the greatest extent practicable under State law, by the real property acquisition policies prescribed by section 301 of the Act and by the practices relating to the acquisition of buildings, structures, and improvements prescribed by section 302 of the Act.

(c) The assurances required by this section will be required even though the financial assistance by the Department does not extend to the acquisition of the real property, whether or not such real property is furnished by the State agency as a required contribution incident to a project receiving financial assistance from the Department.

Subpart C—Assurance of Adequate Replacement Housing Prior to Displacement By a Project

§ 15.15 Project assurance of housing availability.

(a) The Department will not proceed with any phase of a project, or authorize a State agency to proceed with any phase of a project, which will result in the displacement of any person until the Department has determined, or received from the displacing State agency (in addition to the assurances called for by § 15.10) a relocation plan containing satisfactory assurances that within a reasonable period of time prior to the displacement of such persons by that project there will be, on a basis consistent with the requirements of title VIII, Fair Housing, of Pub. L. 90-284 (42 U.S.C. Chapter 45), available in areas not generally less desirable in regard to public utilities and public and commercial facilities, such as schools, stores, and public transportation, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings (as described in paragraph (d) of this section) equal to the number of, and available to, those of such displaced persons who are expected to require replacement dwellings and reasonably accessible to their places of employment. A State agency that is not required to obtain an authorization from the Department with respect to individual projects must nevertheless submit a relocation plan to the Department for approval unless the State agency determines before the project is carried out that the project will not cause the dislocation of persons.

(b) An assurance or determination called for by paragraph (a) of this section must be based upon a current survey and analysis of available replacement housing made by or on behalf of the displacing agency. Such a survey and analysis must take into account competing demands for such housing.

(c) In certain extraordinary situations, such as where immediate possession of real property is of crucial importance, the Secretary may waive or modify the requirements of paragraph (a) of this section. A request for such a waiver or modification must be supported by a documentation sufficiently substantial to show the need for such a waiver or modification.

(d) A decent, safe, and sanitary dwelling is one which is in sound, clean, and weathertight condition and which meets the applicable requirements of State and local building, plumbing, electrical, housing and occupancy codes or regulations. The following criteria, subject to adjustment for unusual circumstances or for unique geographical areas, will be applied in determining whether a dwelling is decent, safe, and sanitary:

(1) If it is a housekeeping unit it must include a kitchen with a fully usable sink; a cooking stove, or connections for one; a separate and complete bathroom; hot and cold running water in both the kitchen and bathroom; an adequate and safe wiring system for lighting and other electrical services; and such heating facilities as are required by local housing codes or are called for by climatic conditions.

(2) If it is a nonhousekeeping unit it must meet local code standards for boarding houses, hotels, or other congregate living quarters. If local codes do not include requirements relating to space and sanitary facilities, standards to be applied in that regard are subject to the approval of the Secretary.

(3) Occupancy standards must comply with local housing codes or, in the absence of such local housing codes, the requirements of the Secretary in that regard.

(e) Where local housing codes do not exist or do not contain adequate minimum standards, the Secretary will prescribe the minimum standards to be applied.

§ 15.16 Housing provided as a last resort.

The Secretary will provide for replacement housing for Federal projects, or take or approve action by a State agency to develop replacement housing for projects financially assisted by the Department. In taking or approving such action, the Secretary will be guided by the criteria and procedures prescribed by the Secretary of

Housing and Urban Development and published at 37 FR 3633 on February 18, 1972 (24 CFR Part 43, Subpart A).

§ 15.17 Loans for planning and preliminary expenses.

Section 215 of the Act authorizes the making of loans, in the nature of seed money loans, for planning and obtaining federally insured mortgage financing to stimulate the construction or rehabilitation of sale and rental housing to meet the needs of displaced persons. Such loans may be made to nonprofit, limited dividend, or cooperative organizations, or to public bodies, for not more than 80 percent of the reasonable expenses, prior to construction, for activities such as preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site title searches and appraisals, application and mortgage commitment fees and charges, legal fees, and construction loan fees and discounts. Loans to nonprofit organizations will be interest free. The making of such loans is subject to the criteria and procedures prescribed by the Secretary of Housing and Urban Development and published at 37 FR 14768 on July 25, 1972 (24 CFR Part 43, Subpart B).

Subpart D—Actual Moving and Related Expenses and Losses

§ 15.21 Eligibility.

All displaced persons (including one who conducted a business or farm operation on acquired property) is eligible for payment for his moving and related expenses in moving from real property acquired by or on behalf of a displacing agency. A person who conducts a business or farm operation on acquired property on which he lives or on other acquired property may be eligible for the moving and related expenses of himself and his family, and for his personal property, including personal property used in such a business or farm operation.

§ 15.22 Application.

(a) A displaced person eligible for payments under title II of the Act shall be entitled to payments or assistance under this subpart only upon application therefor, with necessary supporting documentation, within 18 months from the date of his displacement or from the date on which the displacing agency makes final payment for the real property, whichever is later. The head of the displacing agency may extend that period upon a proper showing of good cause.

(b) Payments to a displaced person under title II of the Act shall be made promptly after he moves. Such payments may be made in advance of such a move in a hardship case justifying such an advance payment even though full documentation supporting the application has not been filed.

§ 15.23 Allowable moving and related expenses.

(a) Subject to the limitations in paragraph (b) of this section, the following expenses are allowable as moving and related expenses:

(1) The cost of transportation of individuals, families, and personal property to a replacement site not more than 50 miles distant except when the Secretary determines that relocation beyond 50 miles is justified under the circumstances.

(2) The cost of packing and crating, and of unpacking and uncrating, personal property.

(3) The cost of advertising for packing and crating, unpacking and uncrating, and transportation services when the Secretary determines that such advertising is necessary or desirable.

(4) The cost of storage of personal property for a period of time when the Secretary determines that storage for such a period, generally not in excess of 12 months, is necessary or desirable in connection with the relocation.

(5) The cost of premiums on insurance covering the loss of or damage to personal property while in transit or in storage authorized pursuant to paragraph (a)(4) of this section.

(6) The value of personal property lost, stolen, or damaged (other than through the fault or negligence of the displaced person or his agent or employee) in the process of moving or in storage authorized pursuant to paragraph (a)(4) of this section, if insur-

ance to cover such a loss was not reasonably available.

(7) The cost of removal, installation, and reestablishment of, and the reconnection of utilities for, machinery, equipment, appliances, and other items not acquired as real property, including such modifications thereof as is deemed necessary by the Secretary. Prior to the payment for any such costs in relation to such property, the displaced person must agree in writing that such property is personal and that the displacing agency is released from any liability for payment for the value of such property.

(8) Such other related expenses as the Secretary determines to be reasonable under the circumstances.

(b) When the displaced person accomplishes the move by himself or by the use of his family or employees, the amount of allowable expenses will not exceed the estimated commercial cost of such a move.

§ 15.24 Direct losses incurred in moving or discontinuing a business or farm operation.

(a) If a displaced person does not move personal property used in a business or farm operation but has made a bona fide effort to sell such personal property, he is entitled to payment for the loss of such personal property, and he may be reimbursed for expenses reasonably incurred in such a selling effort.

(b) If a business or farm operation is discontinued, a displaced person is entitled, with respect to personal property which was used in connection therewith, to a payment for what would have been its fair market value for its continued use at its location prior to displacement minus the net proceeds from its sale or, if abandoned after a bona fide effort to sell, to the estimated cost of moving it 50 miles, whichever is less. Payments to a displaced person shall not be offset by the cost to the displacing agency of removing such abandoned property.

(c) If a business or farm operation is reestablished, a displaced person is entitled, with respect to personal property which was used in connection therewith but which is not moved but rather is sold and promptly replaced by a comparable item, to a payment for its replacement cost minus the net proceeds from its sale or the estimated cost of moving it 50 miles, whichever is less.

(d) If personal property used in a business or farm operation to be moved is of high bulk and low value and the cost of moving it would, in the judgment of the Secretary, be disproportionate to its value, the allowable expense of moving such personal property will not exceed the cost of replacing it at the relocated premises with comparable personal property available on the market minus the estimated net amount that would have been received for such personal property on liquidation. This provision is applicable to junkyard items and to stockpiled sand, gravel, minerals, metals, or similar items of personal property.

(e) If the cost of moving or relocating an outdoor advertising display is determined by the displacing agency to be equal to or in excess of the inplace value of the display, consideration should be given to acquiring such a display as a part of the real property except when such an acquisition is prohibited by law.

§ 15.25 Allowable expenses in connection with searching for a replacement location for a business or farm operation.

(a) The following expenses are allowable under this subpart in connection with the searching for a replacement location for a business or farm operation:

(1) Actual travel costs but not in excess of 10 cents a mile.

(2) Cost of meals and lodging away from home.

(3) The value of time spent in searching for a replacement location for a business or farm operation, at the rate of the displaced person's salary or earnings but not in excess of $10 an hour.

(4) In the discretion of the displacing agency, such brokerage, realtor, or other professional fees in connection with relocating a business or farm operation in the area as is customary under the circumstances.

(b) The total amount allowable to a displaced person under this section will not exceed $500 unless the Secretary determines that a larger amount is justified under the circumstances.

§ 15.26 Nonallowable moving expenses and losses.

The following expenses are not allowable under this subpart in connection with the relocation of a business or farm operation:

(a) Additional expenses incurred because of living at a new location.

(b) The cost of moving structures or other improvements to real property as to which the displaced person reserved ownership, except as otherwise provided for by the Act.

(c) The cost of improvements to the replacement site, except as provided for in § 15.23.

(d) Interest on loans to cover moving and related expenses.

(e) Loss of goodwill.

(f) Loss of profits.

(g) Added expenses incurred because of a loss of trained employees.

(h) Expenses or losses resulting from personal injury.

(i) The cost of preparing applications for moving and related expenses and of preparing supporting documentation.

(j) The cost of the modification of personal property to adapt it to the replacement site, except when required by law.

(k) The cost of searching for a replacement dwelling.

(l) The cost of establishing a different or larger business or farm operation to the extent that such a cost exceeds the estimated cost of reestablishing the business or farm operation being discontinued.

Subpart E—Payments in Lieu of Actual Moving and Related Expenses

§ 15.30 Use of schedules in connection with displacement from dwelling.

A person displaced from a dwelling may at his option receive, in lieu of actual moving and related expenses for himself and his family under Subpart D of this part, a moving expense allowance, not in excess of $300, determined according to schedules established by the highway department of the State in which the acquired dwelling is located and approved by the Federal Highway Administrator or, in the absence of such a highway department schedule, according to schedules established by the Federal Highway Administrator, plus a dislocation allowance of $200.

§ 15.31 Fixed payment for person displaced from his place of business or farm operation.

(a) A person displaced from his place of business or farm operation may, at his option, receive, in lieu of actual moving and related expenses in that regard under Subpart D of this part but in addition to such payments as he may be entitled to for himself and his family under Subpart D of this part or § 15.30, a fixed payment in the amount of the average annual net earning before Federal, State, and local income taxes of his bona fide business or farm operation during the 2 taxable years immediately preceding the taxable year in which the business or farm operation is moved from the acquired real property or during such other period as the head of the displacing agency determines to be more equitable for establishing such average annual net earnings, including any compensation paid by the business or farm operation to the owner or his spouse or dependents during such a base period, but not less than $2,500 nor more than $10,000 in respect of any bona fide business or farm operation, except that no payment will be made under this section with respect to a business conducted primarily for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, other personal property, or services by the erection and maintenance of outdoor advertising displays.

(b) No payment may be made pursuant to this section in respect of a business unless the Secretary determines (1) that the business cannot be relocated without a substantial loss of existing patronage and (2) that the business is not a part of an enterprise with at least one other establishment which is engaged in the same or a similar business and which is not being acquired.

(c) The determination of whether there will be a substantial loss of existing patronage is to be made, except as provided for in paragraph (d) of this section, by the displacing agency after considering all pertinent circumstances, including but not limited to the following factors:

(1) The type of business conducted by the displaced person.

(2) The nature of the clientele of the displaced person.

(3) The availability of property suitable for use as a new location on which to conduct the business.

(4) The relative importance to the business of the present location and such new locations as are available.

(d) The determinations of whether there will be a substantial loss of existing patronage of an activity conducted by a nonprofit organization and of whether the activity is a part of an enterprise with at least one other establishment which is engaged in the same or a similar activity and which is not being acquired will be made by the Secretary. For this purpose, the term "existing patronage" includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

(e) A payment will be made under this section with respect to the acquisition of a part of the property used by a person for a farm operation only when the displacing agency determines that the acquired property was in fact used for a farm operation before the taking and that the remaining property cannot be expected to be so used for a farm operation and continue to contribute substantially to the operator's support.

Subpart F—Replacement Housing Payments

§ 15.35 Payments for replacement housing costs to homeowners.

(a) A person displaced from a dwelling actually owned and occupied by him for at least 180 days prior to the initiation of negotiations for the acquisition of that dwelling is entitled, in addition to entitlement to other payments under this part, to payment for the additional cost, if reasonable, of acquiring a comparable replacement dwelling which is decent, safe, and sanitary and which he purchases and occupies within 1 year from the date he received final payment for the dwelling from which he was displaced or from the date on which he moved therefrom, whichever is later, as well as payment for additional interest costs as provided for in § 15.37.

(b) A comparable replacement dwelling is a dwelling that is functionally equivalent to, and substantially the same as, the acquired dwelling, not excluding for this purpose newly constructed housing. Each aspect of the dwellings need not be individually compared as long as all the requirements of paragraph (c) of this section are met.

(c) The additional cost of a replacement dwelling will not be regarded as unreasonable if that additional cost results from the need for acquiring a dwelling which is decent, safe, and sanitary, which is adequate to accommodate the displaced person and his family, which is located in an area not generally less desirable in respect of neighborhood conditions such as municipal services and other environmental factors, public utilities, and public and commercial facilities, which is reasonably accessible to the displaced person's place of employment or potential place of employment, which is within the financial means of the displaced person, and which is available on the private market. If such housing is not available, the displacing agency may, for purposes of this subpart and for making housing referrals, consider housing exceeding the other basic criteria.

§ 15.36 Limitation on payments for replacement housing costs.

(a) The amount of a payment for the additional cost of a replacement dwelling to a displaced dwelling owner will not exceed the difference between the amount paid by the displacing agency for the acquired dwelling and the amount paid by the displaced dwelling owner for a comparable dwelling not in excess of a reasonable amount as determined by the schedule method described in paragraph (b) of this section, or by the comparative method described in paragraph (c) of this section, or by another method approved pursuant to paragraph (d) of this section, whichever is the least, and in no event will exceed $15,000.

(b) *Schedule method.* The Secretary may establish a schedule of reasonable acquisition costs of comparable replacement dwellings for the various types of dwellings to be acquired in the community or area involved and meeting the conditions prescribed in § 15.15(d) as well as being open to all persons regardless of race, color, religion, or national origin consistent with the requirements of title VIII, Fair Housing, of Pub. L. 90-284 (42 U.S.C. Chapter 45).

(c) *Comparative method.* The Secretary may determine the cost of a comparable replacement dwelling on the basis of the asking price, adjusted to reflect market experiences, of a dwelling or dwellings most representative of the dwelling acquired by the displacing agency and meeting the conditions prescribed in § 15.15(d) and paragraph (b) of this section. A single dwelling unit will be used for comparison purposes only when additional comparable dwellings are not available.

(d) *Alternative method.* The head of the displacing agency may develop criteria for computing the cost of replacement housing when the use of neither of the methods described in paragraph (b) or (c) of this section is feasible. Such an alternative method will be subject to the approval of the Secretary.

(e) For purposes of this section, the cost of a replacement dwelling includes legal, closing, and related costs such as: (1) The cost of a title search, the preparation of conveyance instruments, notarial fees, surveys, the preparation of plats, and charges incident to recordation, (2) lender's, FHA, or VA appraisal fees, (3) FHA application fee, (4) the cost of a certification of structural soundness when required by the lender, FHA, or VA, (5) the cost of a credit report, (6) the cost of a title policy or abstract of title, (7) an escrow agent's fee, and (8) the cost of revenue stamps and of sale or transfer taxes.

(f) For purposes of this section, the cost of a replacement dwelling does not include a fee, cost, charge, or expense determined to be a part of the finance charge under title I, the Truth in Lending Act, of Pub. L. 90-321, and Regulation "Z" (12 CFR Part 226) issued pursuant thereto by the Board of Governors of the Federal Reserve System.

§ 15.37 Payments for additional interest costs incurred.

(a) In addition to entitlement to the payments provided for by § 15.35, a person displaced from a dwelling actually owned and occupied by him shall be entitled to compensation for any increased interest costs with respect to the amount that is refinanced if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage for not less than 180 days prior to the initiation of negotiations for the acquisition of that dwelling.

(b) A payment under this section shall be equal to the difference between the discounted present value of the remaining interest payments that were called for by the mortgage on the acquired dwelling and the discounted present value of the interest payments, called for with respect to that amount of principal of the mortgage on the replacement dwelling that is equal to the unpaid principal of the mortgage on the acquired dwelling for the length of its remaining term. Such a payment shall also cover the cost of points paid with respect to the mortgage on the replacement dwelling and the cost of those finance charges that are referred to in § 15.36(f).

(c) For purposes of paragraph (b) of this section, discounted present value shall be calculated on the basis of the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

§ 15.38 Mortgage insurance.

Section 203(b) of the Act authorizes the head of any Federal agency administering a Federal mortgage insurance program, upon application by a mortgagee, to insure any mortgage (including advances during construction) executed by a person assisted under that section on a comparable replacement dwelling, which mortgage is eligible for such insurance without regard to any eligibility requirements otherwise applicable with respect to age, physical condition, or other personal characteristics of mortgagors, and to make commitments for the insurance of such a mortgage prior to the date of execution of the mortgage.

§ 15.39 Payments to tenants and others for the rental of replacement dwellings.

(a) A displaced tenant of a dwelling which he actually and lawfully occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment under this section if he rents rather than purchases a decent, safe, and sanitary replacement dwelling.

(b) A displaced owner of a dwelling which he actually owned and occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department or which he so owned and occupied for a period of more than 180 days but as to which he has not purchased and occupied a decent, safe, and sanitary replacement dwelling may be eligible for a rental payment under this section.

(c) The amount of the rental payment under this section, which will not exceed $4,000 for a displaced person, will be based on the rental agreed to by the displaced person subject to a limitation determined either by the schedule method described in paragraph (d) of this section or by the comparative method described in paragraph (e) of this section.

(d) The Secretary will establish a rental schedule for renting comparable replacement dwellings (or one or more dwellings most representative of the dwelling acquired) which are available in the private market for the various types of dwellings to be acquired, based upon a current survey and analysis of the market for each type of dwelling required. Payment pursuant to such a schedule will be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (based on the average monthly rental from the schedule) and by subtracting from that amount an amount equal to 48 times the average monthly rental, if reasonable, paid by the displaced person for the acquired dwelling over the 3 months (or more if necessary to determine a representative figure) immediately preceding the initiation of negotiations for the acquisition of that dwelling. If the average rental was unreasonably high or if the displaced person was the owner, the subtraction will be based on a rental charge that is determined would have been reasonable for the acquired dwelling. The amount subtracted will include any rent supplements supplied by others except when such a supplement is to be discontinued upon vacation of the property.

(e) When the method described in paragraph (d) of this section cannot be feasibly applied, the Secretary will apply such criteria as are reasonable and appropriate for computing the rental payment.

(f) A payment of $500 or less for rental will be made in a lump sum. All such payments aggregating in excess of $500 will be paid in semi-annual installments of $500 each except that the final installment shall be for that amount, not in excess of $500, necessary to complete the payments. Prior to making the initial payment, the displacing agency must have determined that the displaced person is occupying a decent, safe, and sanitary dwelling. The manner of making such payments may be modified to accommodate a reasonable request of the displaced person reflecting his wishes in that regard.

§ 15.40 Payments to tenants and others for the purchase of replacement dwellings.

(a) A displaced tenant of a dwelling which he actually and lawfully occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment sufficient for him to make a downpayment on the purchase of a decent, safe, and sanitary dwelling if he elects to purchase rather than to rent such a dwelling.

(b) A displaced owner of a dwelling which he actually owned and occupied for a period of not less than 90 days, but not more than 180 days, prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment sufficient for him to make a downpayment on the purchase of a decent, safe, and sanitary dwelling if he elects to purchase rather than to rent such a dwelling.

(c) The amount of a payment under this section is the amount, not in excess of $4,000, necessary to enable the displaced person to make the downpayment required under a conventional loan arrangement for the purchase of a comparable replacement dwelling plus expenses incident to such a purchase, except that such a payment must be applied to the downpayment or incidental expenses as shown on the closing statement and shall be matched by the displaced person for the same purpose to the extent that such a payment exceeds $2,000.

§ 15.41 Notice to tenants of initiation of negotiations for the property.

When a dwelling is being acquired by the Department or by a State agency as a direct result of a program financially assisted by the Department, tenants actually and lawfully occupying such a dwelling shall promptly be advised that negotiations have been initiated for the acquisition of that property and of the date of the initiation of such negotiations.

Subpart G—Relocation Assistance Advisory Services

§ 15.45 Relocation assistance advisory services.

(a) All programs of the Department or of State agencies receiving financial assistance from the Department shall provide for relocation assistance advisory services for persons displaced as a result of such programs, and for persons occupying property immediately adjacent to the real property so acquired who suffer substantial economic injury because of such an acquisition.

(b) The program of the Department for providing relocation assistance advisory services, and the programs for that purpose of State agencies receiving financial assistance for such programs from the Department will:

(1) Determine with respect to persons displaced from their dwellings, their places of business, or their farm operations their needs for relocation assistance arising from such a displacement;

(2) Provide current, complete, and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary dwellings for sale or rent, and of comparable commercial properties and locations for displaced businesses;

(3) Assure that suitable replacement dwellings will be available to displaced persons prior to their displacement except to the extent that that requirement is waived or modified in extraordinary situations as provided for in § 15.15(d);

(4) Assist persons displaced from a place of business or farm operation in obtaining and becoming reestablished in a suitable replacement location;

(5) Supply information to displaced persons concerning Federal and State housing programs, disaster loan programs, and other Federal and State programs offering assistance to displaced persons, business concerns, or farm operations; and

(6) Provide such other advisory services to displaced persons as are appropriate to minimize the hardships to such persons in adjusting to the place of relocation.

(c) In order to assure maximum coordination of relocation activities in a community or area, the displacing agency should consult with appropriate local officials, consistent with the procedures contained in the Office of Management and Budget Circular No. A-95 (Revised), before approving any proposed project in that community or area.

(d) A displacing agency should consider whether to contract for providing the required relocation services with the central relocation agency in such a community or area or, if necessary, with another public agency or a private organization with the capability of providing such relocation services.

Subpart H—Federally Assisted Programs

§ 15.50 Assurances from State agencies.

(a) The Secretary will obtain from State agencies applying to the Department for financial assistance, or entitled by statute to an allotment or apportionment of funds from the Department for financial assistance, with respect to programs or projects which will cause the displacement of any owner or tenant of real property the following assurances:

(1) That fair and reasonable relocation payments and assistance will be provided to or for displaced persons as provided for in this part;

(2) That tenants who will be dislocated will be promptly advised in writing of the initiation of negotiations with the owner of the property occupied by them (generally not in excess of 30 days from the date of initiation of negotiations), that relocation assistance advisory programs will be available to owners and tenants displaced or to be displaced, and that information concerning applicable benefits, policies, and procedures shall be provided them upon request; and

(3) That, within a reasonable period of time prior to displacement, decent, safe, and sanitary housing will be available to persons to be displaced.

(b) In the case of each program or project involving the acquisition of real property regardless of whether it results in the dislocation of a person, the assurance shall also provide that the State agency will be guided, to the greatest extent practicable under State law, by the real property acquisition policies prescribed in Subpart I of this part and will, in any event, pay to the owner of the real property expenses incidental to the transfer of title as prescribed in said Subpart I and, in the event the real property is not finally acquired, the litigation expenses of the owner as prescribed in said Subpart I.

(c) A State agency assurance called for by paragraph (a) or (b) of this section, shall, if appropriate, be accompanied by a statement specifying those provisions of such an assurance that the State agency is unable to give, or that it is not practicable for it to give, in whole, or in part, under its State law. Such an assurance shall also be accompanied by a statement specifying that part, if any, of the payments required under the State law of eminent domain to be made to the owner of real property to be acquired which has substantially the same purpose and effect as a relocation payment called for by this part but which, without regard to this part, is chargeable to the Federal financial assistance for the program or project involved or that no part of such payments is so chargeable. Each such statement shall be supported by an opinion of the chief or other appropriate legal officer of the State, containing an adequate discussion of any asserted legal inability or impracticability of the State agency to provide any part of the required assurances and the extent of any asserted inability of the State agency to pay for a part of the expenses called for by this part.

§ 15.51 Unsatisfactory assurances.

(a) If a State agency is unable to provide an assurance pursuant to § 15.50 that is satisfactory to the Secretary, the project involved shall not be financially assisted by the Department until such time as a satisfactory assurance is so provided unless other means of making the required payments and of providing the required assistance are provided for in a manner satisfactory to the Secretary.

(b) If no such assurance is provided only those projects in that State under the program involved will be financially assisted by the Department that do not involve the displacement of persons or the acquisition of land, as the case may be.

(c) If a State agency does not provide an assurance pursuant to § 15.50 because of a belief that no real property is to be acquired for or as a direct result of the project involved or that the project involved will not directly result in the dislocation of any person and if subsequently real property is in fact so acquired or a person is in fact so dislocated, the financial assistance for that project by the Department will forthwith be terminated until such time as the requisite payment or assistance is provided for to the satisfaction of the Secretary.

§ 15.52 Records.

Each displacing agency receiving financial assistance from the Department shall keep such records, and submit to the Secretary such reports, regarding relocation payments and assistance as may be prescribed by the Secretary. Such records shall include records of notifications to tenants to be displaced of the initiation of negotiation for the acquisition of the properties involved. Such records shall be retained for the period prescribed by the regulations for the affected program for the retention of records but in no event less than 3 years following the completion of the project involved, and shall be available for inspection by representatives of the Federal Government.

§ 15.53 State agency contracts for relocation assistance.

(a) A State agency whose programs or projects cause the dislocation of persons may enter into contracts with any person for providing the relocation assistance called for by this part, or may carry out its responsibilities in that regard through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs.

(b) A copy of any such contract or other agreement pursuant to this section shall be provided to the Secretary. Such a contract or other agreement shall contain such provisions as are consistent with this part, including the following provisions:

(1) Services will be provided consistent with the requirements of this part;

(2) Records will be kept and maintained as required by this part;

(3) The clauses required by Part 1000 of this title implementing title VI of the Civil Rights Act of 1964 (Pub. L. 88-352);

(4) Such other provisions as may from time to time be called for by the Secretary.

§ 15.54 Appeals.

(a) Any person aggrieved by a determination as to eligibility for, or the amount of, a payment or assistance under the regulations in this part may appeal that determination in accordance with such procedures as may be established by the agency concerned.

(b) Each agency concerned shall establish procedures for such appeals, which shall assure that the appellant be accorded a fair hearing with the right to be represented by counsel, including the opportunity for making an oral presentation, that each appeal will be decided promptly, that each appeal decision will include a statement of the basis for the decision, that the agency will for a period of 3 years retain all documents associated with an appeal, that each appellant will have a right of final appeal to the head of the agency concerned, and that any amounts determined to be due the appellant will be promptly paid.

(c) A copy of each appeal decision by a State agency shall be promptly sent to the Department.

§ 15.55 Funding of the cost of payments and assistance.

(a) The cost to a State agency of providing the relocation payments and assistance to a person displaced by a State agency, and of providing payments to owners for the acquisition of real property by a State agency, as a direct result of a program or project for which that State agency receives financial assistance from the Department shall be a cost chargeable in accordance with that program or project unless the Secretary determines that a payment required by a State law of eminent domain has substantially the same purpose and effect as, and would duplicate, a payment otherwise chargeable as a program or project cost by virtue of this section.

(b) Except to the extent that the costs of such payments and assistance are, by section 207 and 211(a) of the Act, made fully chargeable up to $25,000 to the financial assistance provided by the Department, such costs shall be eligible for reimbursement in the same manner and to the same extent as other costs under the program or project involved. It should be noted that the provisions of those sections authorizing the first $25,000 to be fully chargeable to Federal financial assistance expired as of July 1, 1972.

(c) To the extent that Federal funds are available for the purpose, existing grants to, or contracts or agreements with, State agencies will be amended to reflect the additional cost, if any, of providing relocation payments and services to persons displaced on or after January 2, 1971, or the date on which the Act is fully effective in the particular State, and of providing the additional payments, if any, to the owner of property acquired on or after such a date, called for by this part within the limitations provided for by the Act.

(d) Reimbursement or other participation by the Department in payments made by State agencies for relocation will be limited, except in hardship cases, to those payments which are made to persons who move, or move their personal property, as a result of the receipt of written notice to vacate (which notice may have been given before or after negotiations for the acquisition of the real property involved).

(e) State agencies receiving financial assistance from the Department for programs or projects should carefully review such programs or projects for the purpose of eliminating or lessening the extent of the dislocation of persons in order to minimize the financial and social impact of such programs and projects and to avoid significant adverse effects on the quality of the human environment.

§ 15.56 Advance payments.

The Secretary may advance Federal funds to a State agency for relocation payments and assistance pursuant to this part if he determines that such an advance is necessary for the expeditious completion of the program or project.

Subpart I—Real Property Acquisition Policies

§ 15.60 Just compensation.

When real property is acquired by the Department or by a State agency as a direct result of a program or project receiving financial assistance from the Department, the owner of such real property shall be paid as just compensation therefor by the Department, or, to the greatest extent practicable under State law, by such a State agency, not less than the approved appraisal of its fair market value in accordance with § 15.61, even if the property is not acquired by eminent domain proceeding.

§ 15.61 Negotiations for the acquisition of real property.

(a) Before negotiations are initiated for the acquisition of real property, the acquiring agency shall have the real property appraised in terms of its fair market value, and the owner thereof or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(b) When negotiations are initiated for the acquisition of real property, the owner thereof shall be furnished a written statement concerning the proposed acquisition. Such a statement shall contain, as a minimum, the following:

(1) An identification of the real property, including the buildings, structures, and other improvements on the land, as well as fixtures, considered to be a part of the real property, and the estate or interest therein to be acquired.

(2) The amount of the estimated just compensation for the property to be acquired, which shall not be less than the agency's approved appraisal of the fair market value of the property to be acquired, and a summary of the basis for determining the amount of such just compensation. Any de-

crease or increase in the fair market value of the real property prior to the date of its valuation caused by the public improvement for which the real property is being acquired, or by the likelihood that the real property would be acquired for such an improvement, other than a decrease due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. In the case of a partial taking, the damages, if any, to the remaining real property shall be separately stated.

(3) Appraisals shall be conducted as nearly as practicable pursuant to the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 by the Interagency Land Acquisition Conference (G.P.O. 1972).

(c) The acquiring agency shall promptly either make an offer to purchase the property at the full amount of the just compensation therefor as so determined or initiate eminent domain or other proceeding that may be required to avoid a cloud on title to the property.

§ 15.62 Notices to tenants and owners.

(a) Tenants of real property to be acquired shall be promptly notified of the initiation of negotiations for the acquisition of that real property.

(b) To the greatest extent practicable, an owner or tenant lawfully occupying real property shall not be required to move from a dwelling, or to move his business or farm operation, without at least 90 days' written notice of the date by which such a move is required. Such a notice shall be served personally or by certified (or registered) first-class mail.

§ 15.63 Payment of certain expenses.

(a) The owner of real property acquired shall be reimbursed for expenses incidental to the transfer of title to the real property, and litigation expenses incurred when real property is not acquired, as provided for in sections 303 and 304 of the Act.

(b) State agencies receiving financial assistance from the Department for a program or project involving the acquisition of real property shall otherwise be guided by the land acquisition policies enunciated in sections 301 and 302 of the Act to the greatest extent practicable under State law.

Subpart J—Relocation Assistance Payments as Income

§ 15.67 Relocation payments and assistance as income or resources for purpose of other laws.

Section 216 of the Act provides that payments received under title II of the Act in relation to relocation assistance shall not be considered as income for the purposes of the Internal Revenue Code of 1954 or for the purposes of determining the eligibility or the extent of eligibility or any person for assistance under the Social Security Act or any other Federal law. For the treatment of such payments, particularly in relation to resources, in connection with assistance under the Social Security Act, see § 233.20 of this title (37 FR 19371, September 20, 1972).

PART 17—RELEASE OF ADVERSE INFORMATION TO NEWS MEDIA

Sec.

17.1 Definition.
17.2 Basic policy.
17.3 Precautions to be taken.
17.4 Regulatory investigations and trial-type proceedings.
17.5 Context to be reflected.
17.6 Advance notice.
17.7 Retractions or corrections.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 30833, May 9, 1980, unless otherwise noted.

§ 17.1 Definition.

Adverse information released by an agency means any statement or release by the Department made to the news media inviting public attention to an action or a finding by the Department which may adversely affect persons or organizations identified therein. This part does not apply to nor is it affected by any disclosure of records to the public in response to requests made under the Freedom of Information Act (Pub. L. 90-23). The criteria for such disclosures are set forth in the Department's Public Information Regulation (34 CFR, Part 5).

§ 17.2 Basic policy.

All adverse information released to news media shall be factual in content and accurate in description. Disparaging terminology not essential to the content and purpose of the publicity shall be avoided.

§ 17.3 Precautions to be taken.

The issuing Department shall take reasonable precautions to assure that information released is accurate and that its release fulfills an authorized purpose.

§ 17.4 Regulatory investigations and trial-type proceedings.

Adverse information relating to regulatory investigations of specifically identified persons or organizations or to pending agency trial-type proceedings shall be released only in limited circumstances in accordance with the criteria outlined below:

(a) Where the Department determines that there is a significant risk that the public health or safety may be impaired or substantial economic harm may occur unless the public is notified immediately, it may release information to news media as one of the means of notifying the affected public speedily and accurately. However, where the Department determines that public harm can be avoided by immediate discontinuance of an offending practice, a respondent shall be allowed an opportunity, where feasible, to cease the practice (pending a legal test) in lieu of release of adverse information by the agency.

(b) Where it is required in order to bring notice of pending agency adjudication to persons likely to desire to participate therein or likely to be affected by that or a related adjudication, the Department shall rely on the news media to the extent necessary to provide such notice even though it may be adverse to a respondent.

§ 17.5 Context to be reflected.

The authority for and the character of the information shall be made clear, where appropriate, the release shall explain the nature of any studies performed, the sources of relevant data, the areas in which administrative findings of fact were made, and whether the information is based on allegations subject to subsequent adjudication.

§ 17.6 Advance notice.

Any respondent or prospective respondent in an agency proceeding shall, if practicable and consistent with the nature of the proceeding, be given advance notice of information to be released about the proceeding and a reasonable opportunity to prepare in advance a response to the information released.

§ 17.7 Retractions or corrections.

Where the Secretary finds that information released by the Department was misleading or a misstatement of fact and any person named therein requests a retraction or correction, the Department shall issue a retraction or correction in the same manner to all of the media outlets that received the original information (or as many of them as is feasible).

PART 30—CLAIMS COLLECTION

Sec.
30.1 General.
30.2 Scope of regulations.
30.3 Delegation of authority.

AUTHORITY: Sec. 3, 80 Stat. 309, 31 U.S.C. 951-953; Joint Regulations of GAO and Department of Justice, 4 CFR Chapter II, Parts 101-105.

SOURCE: 45 FR 30834, May 9, 1980, unless otherwise noted.

§ 30.1 General.

The regulations of this part adopts and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding $20,000 exclusive of interest, and the referral to the General Accounting Office, and to the

Department of Justice for litigation, of civil claims by the Government.

§ 30.2 Scope of regulations.

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

§ 30.3 Delegation of authority.

(a) The Secretary may compromise, suspend or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.

(b) The appropriate office, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of $800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer.

PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

Subpart A—General

Sec.
35.1 Scope of regulations.

Subpart B—Procedures

35.2 Administrative claim; when presented; place of filing.
35.3 Administrative claim; who may file.
35.4 Administrative claim; evidence and information to be submitted.
35.5 Investigation of claims.
35.6 Final denial of claim.
35.7 Payment of approved claims.
35.8 Release.
35.9 Penalties.
35.10 Limitation on Department's authority.

Authority: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR, Part 14.

Source: 45 FR 30834, May 9, 1980, unless otherwise noted.

Subpart A—General

§ 35.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671-2680, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Education while acting within the scope of his office or employment.

Subpart B—Procedures

§ 35.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Education receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Secretary or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed, with the Department of Education Claims Officer, Washington, D.C. 20202.

§ 35.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable state law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 35.4 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the

first sentence of this paragraph and has made or agrees to make available to the Department any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§ 35.5 Investigation of claims.

When a claim is received, the Department will make such investigation as may be necessary or appropriate for a determination of the validity of the claim.

§ 35.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the Department for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the Department shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final Department action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 35.7 Payment of approved claims.

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

§ 35.8 Release.

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 35.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287.1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§ 35.10 Limitation on Department's authority.

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Department:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Department is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned that the United States or an employee, agent or cost plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Sec.
50.1 Authority.
50.2 Exchange Visitor Waiver Review Board.
50.3 Policy.
50.4 Procedure for submission of application to ED.
50.5 Personal hardship, persecution and visa extension considerations.
50.6 Release from foreign government.

AUTHORITY: 75 Stat. 527, 22 U.S.C. 2451 et seq.; 84 Stat. 116, 8 U.S.C. 1182(e).

SOURCE: 45 FR 30836, May 9, 1980, unless otherwise noted.

§ 50.1 Authority.

Under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Education is an "interested United States Government agency" with the authority to submit requests through the Department of State to the Attorney General for the waiver of the two-year foreign residence requirement for exchange visitors under the Mutual Educational and Cultural Exchange Program.

§ 50.2 Exchange Visitor Waiver Review Board.

(a) *Establishment.* The Exchange Visitor Waiver Review Board is established for the purpose of carrying out the Department's responsibilities under the Exchange Visitor Program.

(b) *Functions.* The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications for waiver submitted to the Department and for rendering recommendations to the Department of State on such applications on behalf of the Secretary.

(c) *Membership.* The Exchange Visitor Waiver Review Board consists of not less than five members, of whom no less than three shall consider any particular application. The Secretary designates an ex officio member of the Board who serves as Chairman of the Board. The Chairman may designate a staff member of the Office of the Secretary to serve as member and Chairman in his absence. Two regularly assigned members are appointed by the Secretary. When, in the Board's judgment, it is required, the Board may obtain expert advisory opinion from other sources.

§ 50.3 Policy.

(a) *Criteria and information pertaining to waivers.* The Department of Education has a stringent and restrictive policy with respect to requesting waivers for foreign visitors under the exchange visitor program. Each case is evaluated individually on the basis of the facts available. The general criteria which are applied are:

(1) The program or activity of the applicant institution or organization in which the exchange visitor is employed must be of high priority and significance in an area of interest to the Department. The Waiver Review Board will not request a waiver when the documentation clearly demonstrates that the problem is primarily one of recruitment in order to overcome a local community or institutional manpower shortage, however serious.

(2) The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof. The Board will not request a waiver when the principal problem appears to be one of administrative or program inconvenience to the institution or other employer.

(3) The exchange visitor must possess outstanding qualifications, training, and experience. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university or other institution.

(b) *Waivers for members of exchange visitor's family.* (1) Where a decision is made to request a waiver for an exchange visitor, a waiver will also be requested for the spouse and children, if any, if they are also subject to the foreign residence requirement.

(2) In cases of married couples where one spouse is an exchange visitor, the subject of a waiver application, and the other is a citizen of the United States or resident alien, a waiver will be requested for the exchange visitor if either spouse is found to meet the strict criteria given above.

§ 50.4 Procedure for submission of application to ED.

(a) The applicant institution (educational institution, corporation, etc.) should send a completed application to the Exchange Visitor Waiver Review Board, Department of Education, Washington, D.C. 20202. Application forms and information may be obtained from the Executive Secretary. The application must be signed by an authorized official of the applicant institution. The information should describe in detail the circumstances of the case involved. This should include but not be limited to:

(1) A complete description of the program or activity in which the exchange visitor is engaged; including factual evidence of the way in which the program or activity serves the national or international public interest.

(2) His or her relationship to the program, particular contribution, and other responsibilities, if any.

(3) The probable future of the program if the waiver is not granted; including specific evidence showing how the loss of the exchange visitor's services would seriously restrain the initiation, continuation, completion, or success of the program or activity, or a major part thereof.

(4) The applicant institution's long-range plans for the exchange visitor, and ways in which the visitor will contribute in the future to the activities in which he or she is employed.

(5) Specific evidence of a demonstrated unique capability of the exchange visitor to make essential contributions to the program or activity over a long period of time.

(6) The exchange visitor's curriculum vitae, bibliography, data and place of birth, present citizenship, date and port of entry and current address.

(7) Any other facts considered germane.

(b) Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to obtain the decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

§ 50.5 Personal hardship, persecution and visa extension considerations.

(a) The Department is not responsible for considering applications for waivers based on:

(1) Exceptional hardship to the exchange visitor's American or legally resident alien spouse or child; or

(2) The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.

(b) Likewise, this Department is not responsible for considering requests for extension of visa.

(c) Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the U.S.

§ 50.6 Release from foreign government.

The Department of State has the responsibility to consider applications for waivers which are based on a notification from the exchange visitor's country that it has no objection to a waiver (22 CFR 63.31).

PART 63—TELECOMMUNICATIONS DEMONSTRATION PROGRAM

Subpart A—General

Sec.
63.1 Purpose and scope.
63.2 Eligibility for award.
63.6 Evaluation of applications.
63.8 Supplemental Regulations.

Subpart B—Financial Provisions

63.23 Telecommunications Demonstration Grants.

AUTHORITY: Title III, Part IV-A of the Communications Act of 1934 (47 U.S.C. 390).

SOURCE: 45 FR 30837, May 9, 1980, unless otherwise noted.

Subpart A—General

§ 63.1 Purpose and scope.

(a) *Applicability.* The regulations in this part apply to the Telecommunications Demonstration Program under Section 392A of the Communications Act of 1934.

(b) *Exceptions to applicability.* The award and administration of contracts shall not be covered by this part. Contracts entered into shall be subject to the regulations in 41 CFR, Chapters 1 and 34.

(c) *Objectives.* The overall objective of the Telecommunications Demonstration Program is to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of education information.

§ 63.2 Eligibility for award.

(a) *Groups and organizations eligible.* Except where otherwise prohibited by law, any public or nonprofit private agency, institution, or organization which is found by the Secretary to be authorized and qualified to carry out a proposed project in accordance with the regulations of this part shall be eligible to receive a grant under this part.

(b) *Project eligible.* Any projects which meet the special criteria in § 63.6(b) shall be eligible for a telecommunications demonstration grant.

§ 63.6 Evaluation of applications.

(a) *Review procedures.* All applications shall be evaluated by the Secretary with the following evaluation criteria in paragraph (b) of this section.

(b) *Criteria for Evaluation of Telecommunications Demonstrations Projects.* Review of applications for Telecommunications Demonstrations grants will take into account the factors listed in paragraphs (b) (1) through (10) of this section:

(1) That the project for which application is made demonstrates innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this authority;

(2) That the project will have original research value which will demonstrate to other potential users that such methods or techniques are feasible and cost-effective;

(3) That the services to be provided are responsive to local needs as identified and assessed by the applicant;

(4) That the applicant has assessed existing telecommunications facilities (if any) in the proposed service area and explored their use of interconnection in conjunction with the project;

(5) That there is significant local commitment (e.g., evidence of support, participation, and contribution by local institutions and agencies) to the proposed project, indicating that it fulfills local needs, and gives some promise that operational systems will result from successful demonstrations and will be supported by service recipients or providers;

(6) That demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(7) That the applicant has the managerial and technical capability to carry out the project for which the application is made;

(8) That the facilities and equipment acquired or developed pursuant to the applications will be used substantially for the transmission, distribution, and delivery of education information, and that use of such facilities and equipment may be shared among these and additional public or other services;

(9) That the provision has been made to submit a summary and factual evaluation of the results of the demonstration at least annually for each year in which funds are received, in the form of a report suitable for dissemination to groups representative of national education, telecommunications interests; and,

(10) That the project has potential for stimulating cooperation and sharing among institutions and agencies, both within and across disciplines.

(c) *Applicant's performance on prior award.* Where the applicant has previously received an award from the Department of Education, the applicant's compliance or noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports, memoranda on performance, and completeness of required submissions: *Provided,* That in any case where the Secretary proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, he shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

§ 63.8 Supplemental Regulations.

Federal financial assistance provided under this part shall be subject to 34 CFR Parts 75 and 77, the general administrative requirements for grants by the Department of Education.

Subpart B—Financial Provisions

§ 63.23 Telecommunications Demonstration Grants.

(a) Funds provided under the Telecommunications Demonstrations Program shall be available to support the planning, development, and acquisition or leasing of facilities and equipment necessary to the demonstration. However, funds shall not be available for the construction, remodeling, or repair of structures to house facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incident to the installation of such facilities or equipment.

(b) Funds shall not be available for the development of programming materials or content.

(c) The use of equipment in demonstration projects shall be subject to the rules and regulations of the Federal Communications Commission (FCC), and grant funds may not be expended or obligated for purchase, lease, or use of such equipment prior to appropriate and necessary coordination by the grantee with the Commission. In particular:

(1) For any project requiring a new or modification of an existing authorization(s) from the FCC, application(s) to the FCC for such authorization(s) must have been tendered for filing prior to the closing date established by any solicitation for grant applications offered under the Telecommunications Demonstration Program.

(2) If the project is to be associated with an existing telecommunications activity requiring an FCC authorization, such operating authority for that activity must be current and valid.

(3) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the Secretary of Education a copy of each FCC application and any amendments thereto.

(4) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must tender for filing with the FCC a copy of the application to the Secretary for a telecommunications demonstration grant.

(5) If the applicant fails to file required applications by the closing date established for grant applications, or if the FCC returns as substantially incomplete or deficient, dismisses, or denies an application required for the project, or any part thereof or for the operation of any facility with which the project is associated, the Secretary may return the application for Federal assistance.

(d) For the purposes of this program, the term "non-broadcast telecommunications facilities" includes but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, and other means (including non-broadcast utilization of telecommunications equipment normally associated with broadcasting use).

PART 64—INSTITUTE OF MUSEUM SERVICES

Subpart A—General

Sec.
64.1 Purpose of museum services program.
64.2 Scope of this document.
64.3 Definition of museum.
64.4 Other definitions.
64.5 Eligibility—Who may apply.
64.6 Related institutions.
64.7 General operational support.
64.8 Other types of assistance—project support.
64.9 Likely size of grants and allocation of funds among activities.
64.10 Allowable costs.
64.11 Basic requirements which a museum must meet to be considered for funding.
64.12 How applications are judged; priorities.
64.13 Criteria for evaluation of applications for general operational support.
64.14 Criteria for evaluation of applications for project support.
64.15 Duration of grant.
64.16 IMS share of the cost of a proposal.
64.17 Applicable grant administration provisions.
64.18 Reports.

Subpart B—Museum Assessment

64.20 Purpose of program.
64.21 Eligibility.
64.22 Allowable costs.
64.23 Form of assistance; limitation on amount.
64.24 Conditions of participation.
64.25 Funding and award procedures.
64.26 Responsibility of museum.

Subparts C-F [Reserved]

Subpart G—Meetings of the National Museum Services Board

GENERAL

64.70 Scope.
64.71 General rule.
64.72 Application to NMSB committees.
64.73 Record vote.

ANNOUNCEMENT OF MEETINGS

Sec.
64.74 Public announcement of meetings.
64.75 Changes in time or place of meeting.
64.76 Changes in subject matter of meeting.
64.77 Publication of announcements.

CLOSED MEETINGS

64.78 Reasons and procedures for closing meetings.
64.79 Requests to close meetings.
64.80 Materials related to closed portions of meetings.
64.81 Opening of transcript or recording of closed meeting.

APPENDIX A

AUTHORITY: Secs. 201-210, Pub. L. 94-462, 90 Stat. 1975, (20 U.S.C. 961-968); (5 U.S.C. 552b).

Subpart A—General

SOURCE: 45 FR 53416, Aug. 11, 1980, unless otherwise noted.

§ 64.1 Purpose of museum services program.

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

§ 64.2 Scope of this document.

This document establishes rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

§ 64.3 Definition of museum.

For the purpose of this part:

(a) "Museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff—

(1) Owns or uses tangible objects, whether animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the public on a regular basis.

(b) "Museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

(1) Aquariums and zoological parks;

(2) Botanical gardens and arboretums;

(3) Museums relating to art, history (including historic building museums), natural history, science and technology; and

(4) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution. The Institute encourages museums to use paid professional staff.

(d) An institution does not exhibit objects to the public for the purposes of this section if the display or use of the objects is secondary to its overall purpose.

(e) For the purposes of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 64.4 Other definitions.

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462. (20 U.S.C. 961-968).

"Applicant" means an institution which is eligible and applies for assistance under the Act and this document.

"Board" means the National Museum Services Board established under Section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as literary, archival and documentary resources required for the study and interpretation of these objects.

"Conservation" includes, but is not limited to, the following functions, as applied to animate as well as inanimate objects: Technical examination of materials, techniques, and conditions; provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, nurturing and transportation of objects; the physical treatment of objects for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and compensation for losses; the systematizing of collections and development of effective data retrieval processes; research and training in conservation; and establishment of the facilities to do research in or practice conservation.

"Department" means the Department of Education.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under Section 203 of the Act.

"Museum services" means services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs to the public through the use of its collections and other resources.

§ 64.5 Eligibility—Who may apply

(a) (1) A museum located in the fifty States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may apply for a grant under the Act.

(2) A public or private nonprofit agency, such as a State or municipal agency or an institution of higher education, which is responsible for the operation of a museum may apply on behalf of the museum.

(3) A museum operated by a department or agency of the Federal Government may apply only to the extent authorized by general priniciples of law applicable to the receipt of Federal assistance by these departments or agencies.

(b) An applicant has the burden of establishing that it is eligible for assistance under this part.

§ 64.6 Related institutions.

(a) If two or more institutions under the common control of one agency or institution or otherwise organizationally related apply for assistance under the Act, the Secretary determines, under all the relevant circumstances, whether they are separate museums for the purposes of establishing eligibility for assistance under this document. See §§ 64.5; 64.9.

(b) IMS regards the following factors as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 64.7 General operational support.

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet its administrative, staff and operating costs.

§ 64.8 Other types of assistance—project support.

(a) In order to increase or improve museum services through exemplary projects which are additional to its operating program, a museum may apply for a grant to:

(1) Develop training programs for its staff;

(2) Obtain technical assistance to carry out its functions or provide technical assistance to other museums;

(3) Develop or demonstrate methods of conservation;

(4) Develop and carry out museum programs for specific segments of the public, such as persons in urban neighborhoods, rural areas, Indian reservations, penal and other State institutions, senior citizens, handicapped persons and educationally deprived or economically disadvantaged persons;

(5) Develop and carry out educational programs;

(6) Cooperate with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan;

(7) Cooperate with local educational agencies to develop and carry out model museum education programs;

(8) Modernize or preserve its facilities or structures (except in fiscal years 1978, 1979, and 1980); and

(9) Develop in-depth, long range institutional plans.

(b) By notice published in the FEDERAL REGISTER and applicable to a particular fiscal year, IMS may limit the types of activities to be funded under this section.

(c) An applicant may apply for one or more types of assistance under § 64.7 and this section.

§ 64.9 Likely size of grants and allocation of funds among activities.

(a) In view of limited funds, it is anticipated that no museum will receive more than $35,000 under the Act for fiscal year 1980 and that most museums which are funded will receive a smaller amount. For future fiscal years, similar limitations may be specified by notice published in the FEDERAL REGISTER.

(b) Not less than 75 percent of the funds available under the Act for grants in a fiscal year will be reserved for grants under § 64.7 (general operational support).

§ 64.10 Allowable costs.

(a) Determination of costs allowable under a grant are made in accordance with government wide cost principles in Appendix C to 34 CFR Part 74, 45 FR 30876 (May 9, 1980), (in the case of applicants which are State or local government agencies), Appendix D (in the case of applicants which are institutions of postsecondary education), and Appendix F (in the case of applicants which are other nonprofit institutions).

(b) Costs of purchasing objects to be included in the collection of a museum are not allowable (except library, literary, or archival material incident to an activity under § 64.7 or § 64.8).

§ 64.11 Basic requirements which a museum must meet to be considered for funding.

(a) *Application.* To apply for a grant, a museum must submit the designated application form containing the information requested in the form. Instructions as to application contents are generally contained in the application notice published in the FEDERAL REGISTER when applications are invited. An application generally requires a museum to demonstrate that it meets the requirements described in this section and other applicable application requirements in the Education Department General Administrative Regulations (EDGAR).

(b) *IRS letter.* A museum applying as a private, nonprofit institution must supply a letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the Internal Revenue Code of 1954.

(c) *Financial statements.* Each applicant museum must supply its financial statement for its most recent completed fiscal year for which information is available. IMS prefers an audited statement. If the applicant has previously received an IMS award, IMS requires that the statement be audited. If the Director finds that a museum cannot meet this requirement because it customarily does not receive audited financial statements separate from those of its parent organization, and if the applicant is periodically audited, the Director may waive or modify the requirement with respect to that museum.

(d) *Long-range plan.* Each applicant museum must include long-range plans for program and financial development.

(e) *Maintenance of effort.* Each applicant museum must assure that it will maintain its fiscal effort for museum services. An applicant complies with this assurance if its aggregate expenditures for museum services (exclusive of Federal assistance) for the grant period are at least equal to those expenditures for the equivalent preceding period.

§ 64.12 How applications are judged; priorities.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in §§ 64.13 and 64.14. Normally, these applications are first evaluated by readers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) (1) Priority is given to museums which have been providing museum services for at least 2 years prior to applying to IMS.

(2) In the case of applications under § 64.8 for fiscal year 1980, priority is given to applications for in-depth long range institutional planning and cooperative education projects between museums and local educational agencies.

(c) To achieve diversity in the distribution of assistance, the Institute considers the location, size, and discipline of the applicant in addition to the criteria in §§ 64.13 and 64.14.

(d) (1) When the Director finds the circumstances described in 34 CFR 75.219(a) of the Education Division General Administrative Regulations (relating to emergencies and other special circumstances), the Director may make a grant to a museum under the procedures described in 34 CFR 75.220. The Director intends to invoke this authority only in emergency situations. The selection procedures in paragraph (a) of this section do not apply to the making of such a grant.

(2) A grant to a museum under this paragraph may not exceed $10,000 in a fiscal year.

(3) Grants under this paragraph may not exceed (in the aggregate) $300,000 in a fiscal year.

(4) The Director may not make a grant under this paragraph unless the Board (or a subcommittee of the Board) approves it.

§ 64.13 Criteria for evaluation of applications for general operational support.

The following criteria apply to the evaluation of all applications for general operational support submitted in fiscal year 1979 and succeeding fiscal years. In applying these criteria, the total operation of the applicant museum is assessed, especially the museum's operation as it would be if the general operational support is granted. This assessment is based primarily on the information supplied in the museum's application. A positive answer to the questions below favors the applicant.

(a) *Museum services.* Are the applicant's museum services of high quality? How will their quality be improved or maintained by the general operational support requested?

(b) *Collection and exhibits.* Are the museum's collections and exhibits of high quality and importance? How will the conservation of the collections be enhanced or maintained if the general operational support is granted?

(c) *Accessibility.* How accessible to the public are the museum's services, collections, and exhibits? How accessible will they be if the general operational support is granted?

(d) *Population served.* To what extent does the museum serve persons who otherwise have limited access to the type of services which it provides?

(e) *Financial management.* What is the quality of the financial management of the museum?

(f) *Long range plans.* What is the quality of the museum's long range plans for financial and program development?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support?

(h) *Use of IMS funds (when applicable).* Has the museum used effectively its IMS funds, if it has received any?

§ 64.14 Criteria for evaluation of applications for project support.

The following criteria apply to the evaluation of all applications for project support. Criteria (a)-(e) of this section are based on EDGAR 34 CFR 75.202-75.206.

(a) *Plan of operation.* (Based on EDGAR 34 CFR, 75.202). What is the quality of the plan of operation for the project? In applying this criterion, IMS looks for information that shows:

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (Based on EDGAR 34 CFR 75.203). What is the quality of the key personnel the applicant plans to use on the project? In applying this criterion, IMS looks for information that shows:

(1) The qualifications of the project director (if any);

(2) The qualifications of each of the other key personnel used in the project;

(3) The time that each person referred to in paragraphs (b)(1)—(2) of this section plans to commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Budget and cost effectiveness.* (Based on EDGAR 34 CFR 75.204). Does the project have an adequate budget and is the project cost effective? In applying this criterion, IMS looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Based on EDGAR 34 CFR 75.205). What is the quality of the evaluation plan for the project? In applying this criterion IMS looks for information that shows an objective, quantifiable method of evaluation under 34 CFR 75.590.

(e) *Adequacy of resources.* (Based on EDGAR 34 CFR 75.206). Does the applicant plan to devote adequate resources to the project?

In applying this criterion, IMS looks for information that show:

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(f) *General applicability.* To what extent does the application address a problem which is general to a number of museums but has not been adequately addressed?

(g) *Model or exemplary project.* To what extent does the project represent a model or exemplary approach to the problem addressed? To what extent may this approach, if successful, be replicated?

(h) *Other Federal support.* Does the applicant lack alternative sources of Federal support for the project?

(i) *Dissemination.* Has the applicant made satisfactory provision for disseminating the results of the project to other interested persons?

§ 64.15 Duration of grant.

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If, in the case of a grant under § 64.8, the grantee needs additional time to complete the grant project, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

§ 64.16 IMS share of the cost of a proposal.

(a) Subject to § 64.9(a) and the applicable requirements in 34 CFR Part 74 relating to allowable costs, a museum may receive a grant for up to 50 percent of its proposed operating or activity budget for museum services in the case of a grant under § 64.7, or up to 50 percent of its approved project costs, in the case of a grant under § 64.8. However, IMS normally does not make grants for more than 30 percent of a museum's operating or activity budget in the case of a grant under § 64.7.

(b) An applicant requesting general operational support under § 64.7 may submit a total operating budget, including volunteer and other contributed services, which shows that the applicant will satisfy the requirements of paragraph (a) of this section, (relating to cost sharing) but which need not identify the particular operating costs for which IMS funds will be used. An applicant which receives general operational support on this basis must be prepared to show that its actual operation conformed to the operating proposal on which its application was judged.

§ 64.17 Applicable grant administration provisions.

(a) Except as stated in paragraph (b) of this section, the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 77, apply to the award and administration of grants under the Act. EDGAR contains general administrative and fiscal requirements related to grant programs administered by the Department of Education of which IMS is a part. Part 34 CFR 75 contains regulations covering how to apply for a grant, information that must be included in applications, general criteria for the selection of applications, grant conditions, administrative responsibilities of those who receive a grant, and compliance procedures. Part 34 CFR Part 77 contains general definitions which apply to all Education Division programs. EDGAR also makes applicable to the Museum Services Program certain other general regulations including 34 CFR Part 74 (Departmental grant administration provisions) and provisions prohibiting discrimination on the basis of race, sex, handicap or age. Applicants should consult EDGAR and other applicable regulations which EDGAR cross references.

(b) The following provisions of EDGAR 34 CFR Part 75 do not apply to general operational support grants under this document:

(1) Sections 75.201-75.206 (selection criteria);

(2) Sections 75.111-75.116 (application contents); and

(3) Sections 75.560-75.568 (indirect cost rates).

§ 64.18 Reports.

In its final report a grantee shall briefly describe how the performance of the grant has satisfied the objectives of the recipient museum as stated in its application and how assistance under the Act has served the purpose of the Act as reflected in the applicable evaluation criteria.

Subpart B—Museum Assessment

Source: 46 FR 33247, June 29, 1981, unless otherwise noted.

Effective Date Note: At 46 FR 33247, June 29, 1981, §§ 64.20—64.26 (Subpart B) was added effective July 29, 1981.

§ 64.20 Purpose of program.

The Secretary makes grants under this subpart to assist museums in carrying out institutional assessments. The grants enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards.

(20 U.S.C. 961, 965)

§ 64.21 Eligibility.

(a) A museum as defined in § 64.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for assessment assistance in the same or a subsequent fiscal year.

(20 U.S.C. 961, 965)

§ 64.22 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment, such as registration fees; surveyor honorariums; travel and other expense of a surveyor; and technical assistance materials.

(20 U.S.C. 961, 965)

§ 64.23 Form of assistance; limitation on amount.

(a) The Secretary makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $600.00.

(c) The aggregate amount of the grants under this subpart may not exceed $240,000 for a fiscal year.

(20 U.S.C. 961, 965)

§ 64.24 Conditions of participation.

The Secretary considers an application (on a form supplied by IMS) by a museum for a grant under this subpart for assessment assistance only if:

(a) The museum applies for assessment to an appropriate professional organization as defined in this section and

(b) That organization notifies IMS that the application for the assessment assistance is complete and that the museum applying is eligible to participate.

An appropriate professional organization for purposes of this subpart means (1) the American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and so designated by notice published in the FEDERAL REGISTER.

(20 U.S.C. 961, 965)

§ 64.25 Funding and award procedures.

(a) The Secretary approves applications meeting the requirements of this subpart on a first-come, first-served basis, in the order in which it is determined that such requirements have been met, until a date in the fiscal year to be established by publication in the FEDERAL REGISTER.

(b) There are no selection criteria.

(c) Section 64.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) The following sections of the Education Department General Administrative Regulations, 34 CFR Part 75, relating to selection criteria and grantmaking procedures, do not apply to the museum assessment program:

(1) Selection criteria, §§ 75.200-75.222; and

(2) Grantmaking procedures, §§ 75.230-75.234.

(e) A museum receiving assistance under this subpart need not submit a financial report or a performance report pursuant to 34 CFR 74.72(f) and 34 CFR 74.82(b).

(20 U.S.C. 961, 965)

§ 64.26 Responsibility of museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 64.13(h) (a criterion for evaluation of general operational support applications) applies to the use of funds under this subpart.

(20 U.S.C. 961, 965)

Subparts C–F [Reserved]

Subpart G—Meetings of the National Museum Services Board

SOURCE: 45 FR 53413, Aug. 11, 1980, unless otherwise noted.

GENERAL

§ 64.70 Scope.

5 U.S.C. Section 552b, added to the United States Code by the Government in the Sunshine Act, Pub. L. 94-409 (1976), provides that collegial bodies which head Federal agencies must, with certain exceptions, hold their meetings in public. Section 552b applies to meetings of the National Museum Services Board ("NMSB"). The regulations in this document (Subpart G of Part 64, Title 34 CFR) set forth procedures for the conduct of meetings of the NMSB in accordance with Section 552b.

§ 64.71 General rule.

Unless properly closed under § 64.78, every portion of every meeting of the NMSB is open to public observation. For the purposes of this document a "meeting" means the deliberations of at least the number of members of the NMSB required to take action on behalf of the NMSB, where these deliberations determine, or result in the joint conduct or disposition of, official IMS business. (A "meeting" does not include deliberations required or permitted by subsections (d) or (e) of Section 552b.)

§ 64.72 Application to NMSB committees.

This document applies to committees of the NMSB when they are authorized to make final policy decisions on the NMSB's behalf. This document does not apply to committees or informal working groups of the NMSB which are authorized to make recommendations or reports to the NMSB or to perform technical or ministerial functions on its behalf.

§ 64.73 Record vote.

(a) Certain action of the NMSB with regard to meetings under these regulations may be taken only by "record vote." For purposes of this document, a vote of the NMSB is a "record vote" if—

(1) It carries by a majority of all those holding office as NMSB members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each member voting is recorded.

(b) Within one day of a record vote to close, or withhold information about, a meeting, or any record vote for this purpose that does not achieve the necessary majority, the NMSB makes available to the public a written record showing the vote of each member.

(c) The NMSB may take a vote with respect to matters governed by this part (without convening) by means of circulation of a written ballot, tally sheet, or other notation procedures.

ANNOUNCEMENT OF MEETINGS

§ 64.74 Public announcement of meetings.

(a) Except as stated in paragraphs (b) and (c) of this section, the NMSB makes a public announcement of each meeting at least one week before the meeting. The announcement covers:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and phone number of the official designated to respond to requests for information on the meeting.

(b) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the NMSB by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a public announcement is made at the earliest practicable time.

(c) All or any portion of the announcement of any meeting may be omitted if the NMSB by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 64.78.

§ 64.75 Changes in time or place of meeting.

The time or place of a meeting of the NMSB that has been publicly announced as provided in § 64.74 may subsequently be changed. However, the change must be publicly announced at the earliest practicable time.

§ 64.76 Changes in subject matter of meeting.

The subject matter of any portion of any meeting of the NMSB that has been publicly announced as provided in § 64.74 (or the determination whether any portion of any meeting so publicly announced will be open or closed) may subsequently be changed if—

(a) The NMSB determines by record vote that agency business so requires and that no earlier announcement of change was possible; and

(b) The NMSB publicly announces the change and the vote of each member on the change at the earliest practicable time. (Deletion or postponement of agenda items are not subject to the requirements of this section.)

§ 64.77 Publication of announcements.

Promptly following a public announcement required by these regulations, the NMSB submits, for publication in the FEDERAL REGISTER, a notice containing information regarding the announcement as required by Section 552b.

CLOSED MEETINGS

§ 64.78 Reasons and procedures for closing meetings.

(a) The NMSB may, by record vote in accordance with Section 552b, close any portion of a meeting if it determines that the portion falls within one of the exceptions stated in 5 U.S.C. Section 552(c). (These exceptions are listed in Appendix A.)

(b) In making a determination under paragraph (a) of this section, the NMSB considers whether the public interest merits keeping the meeting open although an exception applies.

(c) The Board addresses requests for the certification required by Section 552b to the General Counsel of the Department of Education.

(d) Within one day of a record vote closing a portion of a NMSB meeting, the NMSB makes available a full written explanation of the NMSB's action and a list of all persons it expects to attend the meeting and their affiliations.

§ 64.79 Requests to close meetings.

A person who believes his or her interests may be directly affected by a meeting or a portion of a meeting may request the NMSB to close it to the public for a reason cited in paragraphs (5), (6), or (7) of Appendix A. Such requests are handled under procedures established by the NMSB in accordance with Section 552b.

§ 64.80 Materials related to closed portions of meetings.

If a portion or portions of any meeting of the NMSB are closed to the public—

(a) The presiding officer of the meeting (usually the Chairman of the NMSB) furnishes a statement setting forth the time and place of the meeting and the persons present (including staff).

(b) Except where the Act authorizes minutes to be kept, the NMSB makes a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(c) The NMSB maintains the presiding officer's statement, the General Counsel's certificate as required by Section 552b, and the transcript, recording, or minutes of the meeting for at least two years after the meeting and at least one year after the NMSB completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 64.81 Opening of transcript or recording of closed meeting.

(a) Except as stated in paragraph (b) of this section, the NMSB makes available for inspection the transcript, electronic recording or minutes of every portion of every closed meeting on request to any member of the public. The transcript or recording is made available in an easily accessible place. The NMSB furnishes to any member of the public on request copies of the transcript (or of a transcription of the recording) disclosing the identity of each speaker. The NMSB charges for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NMSB withholds the transcripts or recording of the discussion of any agenda item if the Chairman of the NMSB (or a NMSB member designated by the Chairman) determines that the discussion contains information which should be withheld under the same standards which apply for closing meetings under § 64.78. The NMSB releases the transcript or recording so withheld when the Chairman (or the Chairman's designee) determines that the grounds for withholding no longer apply.

APPENDIX A

A meeting may be closed if:

(1) It is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) It is likely to relate solely to the internal personnel rules and practices of the IMS or another Federal agency;

(3) It is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) It is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) It is likely to involve accusing any person of a crime, or formally censuring any person;

(6) It is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) It is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(7);

(8) It is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) It is likely to disclose information, the premature disclosure of which (i) in the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed IMS action unless the IMS has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the IMS participation in a civil action or proceeding, or action in a foreign court or international tribunal, or an arbitration.

PART 67—STUDENT LOAN MARKETING ASSOCIATION—ISSUANCE AND TRANSFER OF COMMON STOCK

Sec.
67.1 Purpose and scope.
67.2 Definitions.
67.3 Initial issuance of common stock.
67.4 Subsequent transfer of common stock.
67.5 Registration of common stock.

AUTHORITY: Sec. 439(f), Higher Education Act of 1965 as added by sec. 133, Pub. L. 92-318, 86 Stat. 265 (20 U.S.C. 1087-2).

SOURCE: 45 FR 30841, May 9, 1980, unless otherwise noted.

§ 67.1 Purpose and scope.

The purpose of the regulations published under this part is to prescribe the class of institutions and organizations that may acquire the common stock of the Association. The regulations deal with both the initial issuance of such stock and its subsequent transfer but are not to be deemed as exhaustive of the Secretary's authority to issue regulations pursuant to section 439 of the Higher Education Act of 1965. The sections that follow are intended to facilitate the broadest possible distribution of the common stock of the Association among lenders and educational institutions participating in or eligible to participate in programs of guaranteed student loans authorized by part B of title IV of the Higher Education Act of 1965.

§ 67.2 Definitions.

As used in this part—

"Act" means title IV, part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1087-2).

"Eligible holder" means (a) an eligible lender and (b) an eligible institution as defined in this part.

"Eligible institution" means an institution of higher education or vocational school which meets the applicable requirements of sections 435(b)-(f) of the Act.

"Eligible lender" means a financial or credit institution or other organization which (a) is party to a contract of insurance pursuant to the Act with the Secretary (b) is otherwise found by the Secretary to be an "eligible lender" under the Act, or (c) is a party to a contract of insurance with a State or a nonprofit private agency under a student loan insurance program covered by an agreement with the Secretary under section 428(b) of the Act.

"Secretary" means the Secretary of Education.

"Student Loan Marketing Association" or "Association" means the Government sponsored private corporation established by section 439 of the Act (20 U.S.C. 1087-2) for the purpose of serving as a secondary market and warehousing facility for loans to vocational students and students in institutions of higher education which have been insured pursuant to Part 177 of this title.

§ 67.3 Initial issuance of common stock.

In order to effect any initial issuance of shares of common stock to eligible holders, the Association may enter into a contract or contracts with security underwriters, including banks ("underwriters"), under which the underwriters will purchase and take title to such shares for the purpose of distributing them directly or through selected security dealers, including banks, to eligible holders.

§ 67.4 Subsequent transfer of common stock.

Any shares of common stock that have been acquired by an eligible holder may thereafter be sold and transferred only to other eligible holders or to security brokers and dealers who will acquire the shares of common stock for the purpose of making a secondary market in such shares or facilitating the sale and purchase of such shares by eligible holders.

§ 67.5 Registration of common stock.

Any institution or organization entitled to own shares of common stock under the provisions of this part may cause such shares of common stock as it owns to be registered on the books of the Association in its own name or, provided that the request for such registration is accompanied by evidence satisfactory to the Association that the owner is an eligible lender or an eligible institution, in the name of a nominee or in the name of a security broker or dealer, including a bank.

PART 73—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

73.735-101 Principles and purpose.
73.735-102 Applicability.
73.735-103 Responsibilities.
73.735-104 Advice and guidance.

Subpart B—Miscellaneous Statutory Provisions

73.735-201 General.

Subpart C—Gifts, Entertainment and Favors

73.735-301 Accepting gifts and expenses from outside sources.
73.735-302 Offers of gifts and expenses from outside sources.
73.735-303 Gifts to official superiors.
73.735-304 Acceptance of awards.
73.735-305 Other prohibitions.

Subpart D—Outside Employment

Sec.

73.735-401 General provisions.
73.735-402 Professional and consultative services.
73.735-403 Writing and editing.
73.735-404 Publishing.
73.735-405 Teaching, lecturing, and speechmaking.
73.735-406 Holding office in professional societies.
73.735-407 Holding office under State or local government.

Subpart E—Financial Interests

73.735-501 General provisions.
73.735-502 Employees in regulatory, procurement and contracting activities.
73.735-503 Disposition of financial interest.
73.735-504 Exceptions.

Subpart F—Conduct on the Job

73.735-601 General provisions.
73.735-602 Support of Department programs.
73.735-603 Use of Government funds.
73.735-604 Use of Government property.
73.735-605 Conduct in Federal buildings.
73.735-606 Use of official information.
73.735-607 Nondiscrimination.
73.735-608 Participation in management of employee organizations.

Subpart G—Financial Responsibility

73.735-701 General provisions.
73.735-702 Processing indebtedness complaints.
73.735-703 Telephone inquiries.

Subpart H—Political Activity

73.735-801 Applicability.
73.735-802 Restrictions.

Subpart I—Administrative Approval for Certain Activities

73.735-901 Applicability.
73.735-902 Requesting approval.
73.735-903 Acting on employee requests.
73.735-904 Annual reporting.
73.735-905 Maintenance of records.

Subpart J—Statements of Employment and Financial Interest

73.735-1001 General.
73.735-1002 Applicability.
73.735-1003 Content of statements.
73.735-1004 Submission and review of statements.
73.735-1005 Maintenance of records.

Subpart K—Disciplinary and Remedial Action

Sec.
73.735-1101 Disciplinary action.
73.735-1102 Remedial action.

Subpart L—Special Provisions Relating to Special Government Employees and Consultants

73.735-1201 Applicability.
73.735-1202 Ethical standards of conduct.
73.735-1203 Statement of financial interests required.
73.735-1204 Special Government employees who must submit statement of financial interests.
73.735-1205 Coverage—consultants.
73.735-1206 Coverage—special Government employees other than consultants.
73.735-1207 Restrictions—conflict-of-interest statutes.
73.735-1208 Requesting waivers or exemptions.
73.735-1209 Salary from two sources.

APPENDIX A—INDEX TO SOME STATUTES AND EXECUTIVE ORDERS RELATED TO CONFLICT OF INTEREST AND OTHER PROHIBITED ACTIVITIES
APPENDIX B—PROFESSIONAL OCCUPATIONS
APPENDIX C—[RESERVED]
APPENDIX D—CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS (FOR USE BY REGULAR GOVERNMENT EMPLOYEES)
APPENDIX E—CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS (FOR USE BY SPECIAL GOVERNMENT EMPLOYEES)
APPENDIX F—REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY
APPENDIX G—ANNUAL REPORT OF OUTSIDE ACTIVITY
APPENDIX H—CODE OF ETHICS FOR GOVERNMENT SERVICE

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Subpart A—General Provisions

§ 73.735-101 Principles and purpose.

In order to assure that the business of this Department is conducted effectively, objectively and without improper influence or appearance thereof, all employees must be persons of integrity and observe unquestionable standards of behavior. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. An employee must avoid conflicts of his private interests with his public duties and responsibilities. Also, he must not do indirectly that which is improper for him to do directly. For example, members of his family may not accomplish for him that which he, himself, may not do. The propriety of any activity must be considered in relation to general ethical standards of the highest order. Certain standards are set by law. Others are set by regulation and by policy. This part references or discusses these standards and constitutes the Department's regulations on this subject. Failure to observe any of the regulations in this part is cause for disciplinary action.

§ 73.735-102 Applicability.

The regulations in this part apply to all officers and employees (including those in leave-without-pay status) of the Department, except that the regulations in this part apply to special Government employees only to the extent stated in Subpart L of this part. A special Government employee is defined by law as "* * * an officer or employee * * * who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties whether on a full-time or intermittent basis * * *."

§ 73.735-103 Responsibilities.

(a) Supervisors, because of their day-to-day relationships with employees, are responsible to a large degree for maintaining high standards of conduct. They must become familiar with the Department regulations and apply the standards to work they do and supervise. They shall inform new employees as they come on duty and make sure that all employees are kept aware of the regulations. Supervisors shall take suitable action, including disciplinary action in accordance with Subpart K of this part, when violations occur.

(b) Each employee shall be responsible for observing all generally accepted rules of conduct and the specific provisions of law and the regulations in this part. He shall secure approvals when required and file statements of outside work and financial interests as appropriate, as stated in this part. He is subject to discipline in accordance with Subpart K of this part, when he violates laws, rules or regulations on conduct or the ethical principles involved. When an employee has doubt about any provision, he shall consult his supervisor, the personnel office, the administrative office or the counselor or deputy counselor.

§ 73.735-104 Advice and guidance.

The following sources shall provide guidance and assistance as described on matters covered by the regulations in this part:

(a) Supervisors shall advise employees who come to them with questions on matters covered by the regulations in this part, or, as they consider appropriate, shall refer such questions to higher levels of management, the personnel office, or the counselor or deputy counselors who have been designated in accordance with paragraphs (b) and (c) of this section.

(b) The Secretary designates deputy counselors. Deputy counselors shall:

(1) Give authoritative advice and guidance when requested to employees, special Government employees, management officials and personnel offices within their areas of jurisdiction.

(2) Receive information on and attempt to resolve, or refer to the Department counselor, conflicts of interest or appearances of conflicts of interest in Statements of Employment and Financial Interests submitted by employees and special Government employees to whom they are required to give advice and guidance, which are not resolved at lower levels.

(c) The Secretary designates a counselor for the Department. The counselor shall:

(1) Serve as the Department's designee to the Office of Personnel Management on matters covered by the regulations in this part.

(2) Coordinate the Department's counseling services and assure that counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part are available as needed to deputy counselors.

(3) Render authoritative advice and guidance on matters covered by the regulations in this part which are presented to him by employees, special Government employees, and management or personnel offices in the Department.

(4) Receive information on and resolve or forward to the Secretary for consideration, conflicts or appearance of conflicts which appear in the Statements of Employment and Financial Interests submitted under Subpart J or Subpart L of this part, which are not resolved at a lower level.

(d) The names and addresses of the counselor and deputy counselors will be made available to employees by appropriate bulletins, circulars, or other releases of a current nature. Any employee may also obtain the name and address of his counselor or deputy counselor through his personnel office and may seek advice and guidance therefrom, either indirectly through his supervisory or the personnel office, or directly in person, by telephone, or by mail.

Subpart B—Miscellaneous Statutory Provisions

§ 73.735-201 General.

Each employee and special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Department and the Government. These statutory provisions are referenced in Appendix A to this part and some are discussed at greater length in the various subparts of this part. The statutes will be made available for review upon the employee's request to the deputy counselor for his part of the Department or to the counselor.

Subpart C—Gifts, Entertainment and Favors

§ 73.735-301 Accepting gifts and expenses from outside sources.

(a) Law provides that a Federal employee shall not accept anything of value for or because of any official act he has performed or will perform. (See criminal provisions in Appendix A of this part.) In this connection, an employee shall not solicit or accept directly or indirectly any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from members of the public with whom he has official relationships, whether or not proffered for or because of any action or decision of the employee, such as from a person or organization that:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities that are regulated by his agency; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duties.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships such as those between the employee, his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may be properly in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee may accept travel expenses from outside sources only when acceptance is approved in accordance with the provisions of the Department Travel Manual. The Travel Manual states restrictions in this connection: "Neither payment in cash nor services in kind may be accepted where an inspectional or administrative-supervisory relationship exists between the traveler and the non-Federal organization offering to pay his expenses. Examples are: Staff of the Department who have responsibility for making grants to States, local governments, or institutions may not receive travel expenses in cash or kind from organizational segments of the States, local governments, or institutions to which the traveler has responsibility for making grants or assuring compliance with grant regulations; grant-in-aid auditors may not accept travel expenses in cash or kind from any organization which they have responsibility for auditing." An employee may not be reimbursed, or payment made in his behalf for excessive personal living expenses, gifts, entertainment or other personal benefits, nor be reimbursed by a person for travel or official business under agency orders when a reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967. Employees of this Department are authorized by section 211 of Pub. L. 85-67 (42 U.S.C. 3506) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department to accept payment in cash or in kind from non-Federal agencies, organizations, and individuals, for travel and subsistence expenses to cover the cost thereof as provided in the Department Travel Manual.

§ 73.735-302 Offers of gifts and expenses from outside sources.

Law provides criminal penalties for whoever directly or indirectly receives, gives, offers or promises anything of value for performance of or to influence the performance of an official act. (Item 2, Appendix A of this part.)

§ 73.735-303 Gifts to official superiors.

An employee shall not solicit contributions from another employee for a gift or make a donation as a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself.

(Item 24, Appendix A of this part.) However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

§ 73.735-304 Acceptance of awards.

(a) This subpart does not preclude an employee from accepting an award from a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit education and recreational, public service, or civic organization.

(b) An employee shall not accept a gift, present, decoration or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342 and 22 U.S.C. 2621, 2625.

§ 73.735-305 Other prohibitions.

An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

Subpart D—Outside Employment

§ 73.735-401 General provisions.

(a) Outside employment may be appropriate when it will not adversely affect performance of an employee's official duties and will not reflect discredit on the Government or the Department. Such work may include civic, charitable, religious, and community undertakings. It may also include some paid or unpaid outside work which would contribute to technical or professional development. There are certain types of outside work, however, which give rise to a real or apparent conflict of interest. Some of these are prohibited by law as discussed in paragraph (b) of this section. Others are prohibited by Office of Personnel Management, as discussed in paragraph (c) of this section. All of these provisions are binding, but do not necessarily include all possible conflicts of interest. In all instances, good judgment must be used to insure scrupulous compliance with all provisions.

(b) Statutory provisions of Chapter 11 of title 18 of the United States Code (referenced in full in Appendix A of this part) which relate to outside work both during and after Government employment are reiterated below:

(1) An employee shall not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (Items 3 and 4, Appendix A).

(2) A person shall not, at any time after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (Item 27, Appendix A).

(3) A person shall not, for 2 years after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility (but in which he may not have participated personally and substantially) during the last year of his Government service (Item 27, Appendix A).

(c) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment whether or not in violation of any specific provision or statute. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any

other thing of monetary value in any circumstances in which acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner;

(3) Work which identifies the Department or any employee in his official capacity with any organization commercializing products relating to work conducted by the Department, or with any commercial advertising matter, or work performed under such circumstances as to give the impression that it is an official act of the Department or represents an official point of view;

(4) Outside work or activity that takes the employee's time and attention during his official work hours;

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (Item 6, Appendix A). For example, a Department employee may be called upon, as a part of his official duties, to participate in a professional meeting sponsored by a non-Government organization, or to contribute a paper or other writing prepared on official time for publication under non-Government auspices. The employee must not accept an honorarium or fee for such services, even though the organization accepting the service customarily makes such a payment to those who participate. In some cases of this kind, the organization involved may indicate a desire or willingness to make a contribution to some charity, educational institution, or the like, in appreciation of the services furnished by the Department employee since he cannot accept the usual payment. Department standards require that all offers to make such a contribution be refused. No Department employee may suggest, or agree to a suggestion made by others, that such a contribution should be made. Any employee with whom such a question is raised shall explain that the service involved was provided as an official action of the Department and is authorized by law. Under these circumstances, it is inappropriate for any payment to be made, even indirectly and to a third party, for services which are furnished without charge by the Government.

(e) An employee who is a Presidential appointee covered by section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not or will not on request become part of the body of public information.

(f) Application of these general provisions to some specific activities is discussed in §§ 73.735-402 to 73.735-407.

§ 73.735-402 Professional and consultative services.

(a) Employees may engage in outside professional or consultative work only after meeting certain conditions. Except as provided in §§ 73.735-403, 73.735-404, and 73.735-405, the conditions which must be met are:

(1) The work is not to be rendered to organizations, institutions, or State or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to permit existence of conflict or apparent conflict of interest, and

(2) The work is not to be rendered for compensation to help institutions or government units prepare or aid in the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions or government units and the Federal Government. All requests to perform consultative services, both compensated and uncompensated, for institutions or government units which have recently negotiated or may in the near future seek a contract or grant from the Federal Government must be carefully appraised to avoid any conflict or apparent conflict of interest.

(3) Advance administrative approval in accordance with Subpart I of this part must be obtained. Such approval

is required whether or not the services are for compensation, and whether or not related to the employee's official duties.

(b) For the purpose of this section, "professional and consultative work" is work in occupations such as those listed in Appendix B to this part.

(c) Membership on a Board of Directors, Board of Regents, Board of Trustees, Planning Commission, Advisory Council, or Committee, or on any other body which provides advice, counsel, or consultation, shall be considered outside consultative services for which advance administrative approval is required.

§ 73.735-403 Writing and editing.

(a) *General.* Employees are encouraged to engage in outside writing and editing whether or not done for compensation, when such activity is not otherwise prohibited. Such writing and editing, though not a part of official duties, may be on a directly related subject or entirely unrelated. Certain conditions must be met in either case, however, and certain clearances or approvals are prescribed according to the content of the material as set forth in paragraphs (b) through (e) of this section.

(b) *Conditions applying to all writing and editing done not as a part of official duties.* All of the following conditions shall apply to all writing and editing whether related or unrelated to the employee's official duties:

(1) Government-financed time or supplies shall not be used by the author or by other Government employees in connection with the activity.

(2) Official support must not be expressed or implied in the material itself or advertising or promotional material, including book jackets and covers, relating to the employee and his contribution to the publication.

(3) Editing activities must not involve approval or disapproval of advertising matter.

(4) Advance administrative approval must be obtained if required by paragraph (f) of this section.

(c) *Additional conditions applying to writing and editing activities unrelated to the employee's official duties or other responsibilities and programs of the Federal Government.* In addition to observing the conditions in paragraph (b) of this section, the employee must either:

(1) Make no mention of his official title or affiliation with the Department, or

(2) Use his official title or affiliation with the Department in a way that will not suggest or convey official endorsement of the work.

(d) *Additional conditions applying to writing and editing activities related to the employee's official duties or other responsibilities and programs of the Federal Government.* In addition to observing the conditions in paragraph (b) of this section, the employee must either:

(1) Make no mention of his official title or affiliation with the Department, or

(2) Use his official title or affiliation with the Department and a disclaimer as provided in paragraph (e) of this section, or

(3) Submit his material to the Department for technical clearance and for clearance for publication. When technical clearance is denied at any lower level, the employee shall have recourse for review up to the Secretary. These two clearances by the Department will show there are no official objections to the activity and the employee may then use his official title or affiliation with the Department usually without a disclaimer. (Publications and Reports Bulletin No. 2, governs clearances necessary for writing and editing as a part of official duties.)

(e) *Disclaimers.* Disclaimers are required in writing and editing activities in accordance with the following provisions:

(1) Disclaimers shall be used in all writing and editing related to the employee's official duties or other responsibilities and programs of the Federal Government in which the employee identifies himself by official title or affiliation with the Department, except where requirement for disclaimer is waived as result of official clearance.

(2) Disclaimers shall be used in all writing and editing related to the em-

ployee's official position or other responsibilities or programs of the Federal Government, when the prominence of the employee or his position or other reason might lead the public to associate him with the Department, even without identification other than name.

(3) Disclaimers shall read as follows unless a different wording is approved: "This (article, book, etc.) was (written, edited) by (employee's name) in his private capacity. No official support or endorsement by the Department of Education is intended or should be inferred."

(f) *Advance approval.* Advance approval is required in accordance with Sub-part I of this part when one or more of the following conditions apply:

(1) Any Government information is used which is not available on request to persons outside the Government;

(2) Material is written or edited which pertains to subject matter directly related to an employee's official duties. (This includes editing for scientific or professional journals which is related to his official duties.)

(3) Material is written or edited which pertains to any Government-sponsored research or other studies for which material of a confidential nature is used or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the Department to retain the confidentiality of the material and such use is determined to be in the public interest.

(4) Material is edited for publications organized for profit.

§ 73.735-404 Publishing.

Employees are encouraged to engage in publishing activities which are not part of their official duties, when all the following conditions are met:

(a) No financial profit is derived from publishing materials which are made available to the general public by this Department or which are available to the employee because of his official duties, but are not available to the general public.

(b) No financial profit is sought or derived from publishing proceedings or similar compilations of conferences, symposia, or similar gatherings:

(1) Which are sponsored by the Government, or

(2) Which involve the performance of official duties, or are directly related to official duties, or

(3) Where participation or attendance has been authorized on Government time.

(c) The publishing activities are conducted on non-Government time at no expense to the Government.

(d) The official title of the individual engaged in such publishing business is not used. If the individual is the author as well as the publisher, the provisions referred to under § 73.735-403 apply.

§ 73.735-405 Teaching, lecturing, and speechmaking.

(a) *Conditions that must be met.* Employees are encouraged to engage in teaching and lecturing activities which are not part of their official duties when certain conditions are met. These conditions, which apply to outside teaching and lecturing (including giving single addresses such as commencement and Memorial Day speeches) whether or not done for compensation, are:

(1) No Government-financed time is used in connection with such activity, nor Government supplies which are not otherwise available to the public;

(2) Government travel or per diem funds are not used for obtaining or performing such teaching or lecturing;

(3) Such teaching or lecturing is not dependent on specific information which would not otherwise be available to the public;

(4) Teaching, lecturing, or writing may not be for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Secretary gives written authorization for use of nonpublic information on the

basis that the use is in the public interest.

(5) Such activities do not involve knowingly instructing persons on dealing with specific matters pending before Government organizations with which the employee is associated in an official capacity;

(6) Advance approval is obtained when required by paragraph (b) of this section.

(b) *Advance approval.* Advance approval must be obtained in accordance with Subpart I of this part before an employee may:

(1) Teach or lecture for an institution which has or is likely to have official dealings with the Department in which he is employed;

(2) Use, for teaching or lecturing purposes, clinical case records or other material of a confidential nature or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the Department to retain the confidentiality of the material and such use is determined to be in the public interest.

§ 73.735-406 Holding office in professional societies.

(a) Employees may be members of professional societies and be elected or appointed to office in such a society. Activity in professional associations is generally desirable from the point of view of both the Department and the employee. Employees shall avoid, however, any real or apparent conflict of interest in connection with such membership. For example, they must not:

(1) Directly or indirectly commit the Department or any portion of it on any matter;

(2) Permit their names to be attached to documents the distribution of which would be likely to embarrass the Department;

(3) Serve in capacities involving them as representatives of non-Government organizations in dealing with the Government.

(b) In undertaking any office or function beyond ordinary membership in a professional association, a Department employee must obtain advance approval in accordance with Subpart I of this part in any situation in which his responsibilities as an officer would create a real or apparent conflict of interest with his responsibilities as a Department employee. For example, advance administrative approval must be obtained:

(1) Before an employee who is responsible for review and approval of grants or contracts, or is in a supervisory position over those who conduct review and approval, may hold office, or be a trustee or member of the governing board, or the chairman or member of a committee, in any organization which has or is seeking a grant or contract with the operating agency in which he is employed;

(2) Before an employee may hold office in an organization which customarily expresses publicly views on matters of legislative or administrative policy within the areas of concern to the Department.

§ 73.735-407 Holding office under State or local government.

An employee may hold State or local office if it is compatible with his Federal employment in terms of the same criteria as for other private employment. Approval for outside employment with a State or local government may be given orally by the immediate supervisor of the employee unless written approval or approval at a higher level is required by Subpart I of this part, or as deemed desirable by the employee or his supervisor because of the nature of the part-time work.

Subpart E—Financial Interests

§ 73.735-501 General provisions.

(a) An employee shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his Government duties and responsibilities. He shall not participate in his Government capacity in any matter in which he, his spouse, his minor child, or an outside business associate or organization (profit or non-profit) with which he is connected or is negotiating employment has a financial interest (Item 5, Appendix A). The indirect interest in business entities which the holder of shares in a widely held diversified mutual fund or other regulated investment company derives from ownership by the fund or regulated investment company of stocks in business entities is exempted from the provisions of this statutory provision as being too remote or inconsequential to affect the integrity of an officer's or employee's services, except as provided in paragraphs (b) (1) and (2) of this section. In other cases, when the outside financial interest appears not substantial enough to have an effect on the integrity of his official services, the employee shall, each time a matter arises to which his financial interest relates, request administrative approval to participate in accordance with Subpart I of this part.

(b) An employee shall not engage directly or indirectly in financial transactions as a result of, or primarily relying on information obtained through his employment. For example:

(1) An employee shall not use official information not available to the public, on such matters as a successful bid on a contract, or planned Government actions for speculative stock purchases, or stock investment.

(2) An employee shall not use official information not available to the public, on the prospective location of a new Government installation to gain financial advantage in the purchase of real estate.

(3) An employee shall not use official information not available to the public, to inform friends, neighbors, etc., so they may use it for speculative or investment purposes.

§ 73.735-502 Employees in regulatory, procurement and contracting activities.

(a) Employees in procurement and contracting activities are prohibited from having certain types of financial interests, as stated below. The term "employee" as used here, includes line supervisory officials in the upward chain of authority and staff officials who advise supervisory officials.

(b) An employee who serves as a procurement or contracting officer or whose duties include authority to recommend or prepare specifications, negotiate noncompetitive contracts, or evaluate bids, shall not have financial interests in companies with which his office has any significant procurement or contracting relationship. An insignificant relationship exists only when all the following conditions are met:

(1) The company is one with which the employee would rarely or never do official business; (2) such business as he would do with the company is with respect to items of a standard type on the basis of competitive bids or regulated prices, as for utility services; and (3) the amount of the financial interest is very small in relation to the size of the company. Such an employee may not hold shares in a mutual fund or other regulated investment company that specializes in holdings in industries with which his office has any significant procurement or contracting relationship.

(c) An employee who has a direct or indirect financial interest that would be prohibited except that he believes it to be relatively "insignificant" in terms of the discussions in paragraph (b) of this section should request approval for retention by discussing the matter with his supervisor. If the supervisor approves the retention, the fact concerning such financial interest should be recorded. An employee who retains such an approved financial interest must disqualify himself from participating in his Government capacity if a matter arises involving the organization in which he has such interest. If in a special situation an exception to this rule appears desirable, administrative approval must be obtained in accordance with Subpart I of this part. Such approval extends only to the specific situation and may not be interpreted as extending to other situations, even though involving the same outside organization or similar official activities.

§ 73.735-503 Disposition of financial interest.

An employee who is newly assigned to a position in which the holding of stock or other financial interests is prohibited shall liquidate his interests within 90 days of entrance on duty in such position.

§ 73.735-504 Exceptions.

If any situation arises in which it would appear to be contrary to the best interests of the Government, or cause extreme and undue hardship to an individual to apply strictly the policies set forth in this subpart, a request for exception should be forwarded through supervisory channels to the counselor or deputy counselor for his part of the Department, for review and recommendation to the Secretary.

Subpart F—Conduct on the Job

§ 73.735-601 General provisions.

An employee's conduct on the job is, in all respects, of concern to the Federal Government. Courtesy, consideration, and promptness in dealing with others must be shown in carrying out official responsibilities. In addition, specific rules and regulations have been set which must be observed as discussed in this subpart.

§ 73.735-602 Support of Department programs.

(a) When a Department program is based on law or Executive Order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Department on pending legislation proposals before Congressional committees on request; or

(2) Assisting Congressional Committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

§ 73.735-603 Use of Government funds.

Several laws, referred to in Items 18-22, Appendix A to this part, carry penalties for misuse of Government funds. These apply to:

(a) Improper use of official travel;

(b) Improper use of payroll and other vouchers and documents on which Government payments are based;

(c) Taking or failing to account for funds with which an employee is entrusted in his official position;

(d) Taking other Government funds for personal use.

§ 73.735-604 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him. For example:

(a) Only official documents and materials may be processed on Government reproduction facilities. Both supervisors and employees must assure that this rule is strictly followed. (Exception for employee welfare and recreation associations is stated in Chapter 25-10, General Administration Manual. Exception for employee organizations is stated in Personnel Instruction 711-1.)

(b) Employees may drive or use Government automobiles only on official business. (See item 13 of Appendix A for penalty that attaches for incorrect use.)

§ 73.735-605 Conduct in Federal buildings.

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(1) Necessitated by an employee's law enforcement duties; or

(2) Involving fundraising within the Federal service under section 3 of Executive Order 10927 and similar agency-approved activities.

(b) General Services Administration regulations on "Conduct on Federal Property" are applicable to all property under the control of the General Services Administration and are applied to all buildings and space under the control of this department. These regulations prohibit, among other things, gambling and consumption of intoxicating beverages on the premises. The GSA regulations are found in Subpart 101-19.3 of the GSA Regulations, 41 CFR 101-19.3.

§ 73.735-606 Use of official information.

The public interest requires that certain information in the possession of the Government be kept confidential, and released only with general or specific authority under Department. This is necessary because it may involve the national security or because it is private personal or business information which has been furnished to the Government in confidence (Item 19-21, Appendix A). In addition, information in the possession of the Government and not generally available may not be used for private gain. The following paragraphs set forth the rules to be followed by Department employees in handling information in official files or documents:

(a) *Classified information.* Employees who have access to information which is classified for security reasons in accordance with Executive Order 10501, as amended, are responsible for its custody and safekeeping, and for assuring that it is not disclosed to unauthorized persons. See Security Manual, Part 3, for details.

(b) *Security and investigative information.* Security and investigative data received from Government agencies or other sources for official use only within the Department or developed under a pledge of confidence is not to be divulged to unauthorized persons or agencies.

(c) *Use of information for private gain.* Government employees are sometimes able to obtain information about some action the Government is about to take or some other matter which is not generally known. Information of this kind shall not be used by the employee to further his or someone else's private financial or other interests. Such a use of official information is clearly a violation of a public trust. Employees shall not, directly or indirectly, make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

§ 73.735-607 Nondiscrimination.

An employee shall not be discriminated against because of race, color, religion, national origin, sex, age, politics, marital status, or on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with a physical handicap. This prohibition applies to both employment and utilization of Federal employees.

§ 73.735-608 Participation in management of employee organizations.

Any employee has the right to be a member of an employee organization. He shall not, however, participate in the management of an employee organization as an officer of the organization or represent it in dealings with management when such activity might result in a conflict of interest or otherwise be incompatible with law or the official duties of the employee. The duties of managerial executives who determine management policies and put them into effect and of personnel employees, other than those in a purely clerical capacity, are inconsistent with participation in the management or representation of an employee organization. Determination whether such conflict exists in other cases shall be made on a case-by-case basis by management after discussion with the employee organization concerned. Guidelines for such determinations are:

(a) Conflict of interest will be deemed to exist when an employee is an officer of an employee organization or actively represents it on specific matters of direct official concern, and also has continuing responsibility as a management official for

(1) Making administrative decisions or formal recommendations on cases or policies advocated by the same or a similar employee organization, or

(2) Dealing with officers and representatives of the same or a similar employee organization.

(b) The conflict must be immediate and real, not remote and theoretical.

(c) When the conflict is temporary and may be expected to occur only rarely, the employee shall be disqualified from acting as the representative of the employee organization in the particular case.

Subpart G—Financial Responsibility

§ 73.735–701 General provisions.

(a) An employee shall not by failure to meet his just financial obligations reflect adversely on the Government as his employer. He shall pay each just financial obligation in a proper and timely manner. A "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court. "In a proper and timely manner" is a manner which the Department determines does not, under the circumstances, reflect adversely on the Government as his employer. The Department cannot condone laxness on the part of an employee in discharging his financial obligations, particularly those to Federal, State or local governments or to tax-supported institutions such as a city or State hospital or educational institution or in meeting his obligations for support of his family. If for some reason an employee is unable to pay these obligations promptly, he is expected to make satisfactory arrangements for payment and abide by these arrangements. It is the responsibility of the Department to help an employee who asks for advice in meeting such obligations.

(b) When an employee has handled his financial affairs in such a way that

(1) Action on complaints received from his creditors requires the use of a considerable amount of official time, or

(2) It appears that financial difficulties are impairing his efficiency on the job, or

(3) By reason of his financial irresponsibility the attitude of the general public toward the Department is adversely affected, and the employee after counseling does not make arrangements to meet his financial obligations, disciplinary action should be considered in accordance with Subpart K of this part.

(c) Where there is no judgment or acknowledgement in accordance with paragraph (a) of this section, the Department is not obligated to help creditors who have an opportunity to make an investigation before extending credit such as mercantile creditors. The Department should not act as collection agent nor arbitrator when the validity of a debt is questioned.

§ 73.735–702 Processing indebtedness complaints.

(a) *Tax indebtedness.* (1) When an employee cannot pay his Federal income taxes promptly he should get in touch with the local office of the Internal Revenue Service and make arrangements to pay. If he fails to make such arrangements or fails to keep the agreement, the Internal Revenue Service may place a levy against his salary. This will require the payroll office to deduct at least part of the employee's take-home pay to meet the tax obligations.

(2) When a complaint on tax indebtedness is received by a member of the personnel or administrative office or a comparable official, he will discuss it with the employee. The employee will be told that he is expected to make arrangements to pay the indebtedness and to abide by the arrangements. If a supervisor receives such a complaint, he should send it to his personnel or administrative office.

(b) *Indebtedness for family support.* A complaint that an employee has failed to meet his obligations for support of his family will be handled in the same manner as in paragraph (a)(2) of this section.

(c) *Indebtedness in mercantile cases.* When an indebtedness complaint of this type is received, the personnel or administrative office or the employee's supervisor, according to local practice, will discuss it with the employee. If more than one letter is received from the same creditor within 30 days, the additional letter or letters will not be discussed with the employee. If the supervisor holds the discussion, he will send the debt letter with a notation of the results of the discussion with the employee or the employee's statement of intention to the personnel or administrative office for filing.

§ 73.735-703 Telephone inquiries.

(a) Telephone inquiries to verify employment with the Department, the amount of an employee's salary, and similar information should be referred to the personnel or administrative office. No other person or office should give out this information. Where there is question as to whether such information should be provided by telephone the caller should be asked to present his request in writing.

(b) No action will be taken on debt complaints received by telephone. When a creditor calls to make a complaint, he will be told that Department policy does not permit handling debt complaints by telephone and will be told the office to which he should direct his complaint in writing. An employee shall not be called to the telephone to discuss a debt complaint with a creditor.

Subpart H—Political Activity

§ 73.735-801 Applicability.

(a) All employees in the Executive Branch of the Federal Government are subject to basic political activity restrictions in subchapter III of Chapter 73 of title 5, U.S.C. (the former Hatch Act) and Civil Service Rule IV. Employees are individually responsible for refraining from prohibited political activity. Ignorance of a prohibition does not excuse a violation. This subpart summarizes provisions of law and regulation concerning political activity of employees. The Federal Personnel Manual, Civil Service Pamphlet 20, and Federal Employees Facts Leaflet No. 2 contain more detailed information on this subject. These may be reviewed in the personnel office, or will be made available by the counselor or deputy counselor for that part of the Department.

(b) Intermittent employees are subject to the restrictions when in active duty status only and for the entire 24 hours of any day of actual employment.

(c) Employees on leave, on leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted are subject to the restrictions. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restriction during the period covered by the lump-sum payment or thereafter, provided he does not return to Federal employment during that period. An employee is not permitted to take leave of absence to work with a political candidate, committee, or organization or become a candidate for office with the understanding that he will resign his position if nominated or elected.

(d) An employee is accountable for political activity by another person acting as his agent or under the employee's direction or control if he is thus accomplishing indirectly what he may not lawfully do directly and openly.

§ 73.735-802 Restrictions.

(a) Section 7324 of title 5, U.S.C. (the former Hatch Act) provides that employees have the right to vote as they please and the right to express their opinions on political subjects and candidates. Generally, however, they are prohibited from taking an active part in political management or political campaigns or using official authority or influence to interfere with an election or affect its results. There are some exemptions from the restrictions of the statute:

(1) Employees may engage in political activity in connection with any question not specifically identified with any National or State political party. They also may engage in political activity in connection with an election if none of the candidates represents a party any of whose candidates for presidential elector received votes at the last preceding election at which presidential electors were selected.

(2) An exception relates to political campaigns in communities adjacent to the District of Columbia or in communities the majority of whose voters are employees of the Federal Government. Communities in which the exception applies are specifically designated by the Office of Personnel Management. Information regarding the localities and the conditions under which the exceptions are granted may be obtained from the personnel office or the Department counselor or deputy counselor.

(3) Intermittent employees are exempt during such time as they are not in active duty status.

(4) The Secretary, Under Secretary, and Assistant Secretaries of the Department, as well as other officials appointed by the President by and with the advice and consent of the Senate, who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws are exempt from the prohibitions concerning active participation in political management and political campaigns.

(b) There are restrictions other than those imposed by subchapter III of Chapter 73 of title 5, U.S.C. (former Hatch Act) and Rule IV which relate to:

(1) Political contributions and assessments.

(2) Circulars of solicitation.

(3) Solicitation in Federal buildings.

(4) Solicitation by letter.

(5) Payment by one employee to another.

(6) Discrimination because of political contributions.

(7) Purchase and sale of public office.

(8) Political recommendations and discrimination.

(9) Other criminal offenses discussed in 18 United States Code, Chapter 29.

Subpart I—Administrative Approval for Certain Activities

§ 73.735-901 Applicability.

Administrative approval is the authorization by the Secretary (see § 73.735-903 for requests on which the Secretary must act) or such person or persons as he designates for an employee to engage in certain outside activities or to participate in his Government capacity in a matter in which he has a direct or indirect financial interest. It is required in advance for:

(a) Any outside work which creates a conflict or apparent conflict of interest or about the propriety of which an employee is uncertain;

(b) Certain writing or editing activities as specified in § 73.735-403;

(c) Certain types of teaching or lecturing as specified in § 73.735-405;

(d) All professional and consultative services as specified in § 73.735-402;

(e) Any other outside activity or financial interest for which the Secretary imposes an internal requirement for administrative approval;

(f) Participation of an employee in his Government capacity in any matter in which he has a direct or indirect financial interest, on grounds that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government might expect, as specified in Subpart E of this part;

(g) Certain office-holding activities in professional societies as specified in § 73.735-406.

§ 73.735-902 Requesting approval.

Employees shall make requests for administrative approval in writing through administrative channels to the Secretary or to such person or persons as the Secretary designates. Unless the Secretary requires extra copies of the request, it shall be made in one copy only.

(a) *Outside work.* The request shall follow the format prescribed in Appendix F to this part and shall include the information shown in paragraphs (a) (1) through (7) of this section. When an employee's approved outside work changes with respect to the nature or scope of his duties or services performed or in the nature of his outside employer's business, he shall promptly submit a revised request. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he shall notify the officer who approved the request. At any time when the income from an employee's approved outside work changes or there is a change in the nature or scope of the duties or services performed, or the nature of his employer's business, the employee shall submit a revised request. The employee not only has a duty to keep the Department informed of a change of approved outside actions, but to inform the Department promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he shall notify the officer who approved the request.

(1) Employee's name, occupational title, grade or rank, and Federal salary;

(2) Nature of the activity, giving full description of specific duties or services for which approval is being requested. In the case of self-employment in a professional capacity, however, it is sufficient to indicate the type of service to be rendered, as medical, legal, etc.

(3) Name and business of person or organization for which work will be done, or statement that work is to be done as self-employment. If self-employment, show whether alone or with partners, giving their names, and, if such self-employment consists of professional services to a large number of clients or patients, estimate the total number rather than listing them individually.

(4) Place where work will be conducted.

(5) Estimated total time that will be devoted to the activity. (If on a continuing basis, show estimated time per year; if not, show total time and anticipated ending date.)

(6) Whether services can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required.

(7) Method or basis of compensation (e.g., whether fee basis, per diem, per annum, or other).

(b) *Participation in a matter in which an employee has a financial interest.* The request shall include the information listed below. New approval must be sought for each dealing by an employee in his official capacity with any organization or matter in which he, his spouse, minor child, partner, organization in which serving as officer, etc., has a financial interest.

(1) Employee's name, occupational title, grade or rank and Federal salary;

(2) Full description of financial interest: including whether ownership, service as officer, partner, etc.;

(3) Business or activity in which financial interest exists;

(4) Description of official matter in which employee is requesting approval to participate;

(5) Basis for requesting determination that the interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." (If based on a small total value of investment, supply appropriate information on total value, such as total shares held and latest quoted market price. If other basis, explain fully.)

(c) *Providing consultative or professional services to institutions or government units which have negotiated or may seek a Federal grant or contract.* The request shall include the information listed below:

(1) Employee's name, occupational title, grade or rank and Federal salary;

(2) Name and business of institution or government unit for which consultative or professional services will be rendered, giving full description of specific duties or services for which approval is being requested;

(3) Description of the Federal grants or contracts involved (type, granting or contracting department or agency, etc.). Full details must be provided on any aspect of the professional and consultative services which involves, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions and government units and the Federal Government;

(4) Place where work will be conducted;

(5) Estimated total time that will be devoted to the activity. (If on continuing basis, show estimated time per year; if not, show total time and anticipated ending date.);

(6) Whether services can be performed entirely outside of usual duty hours; if not, estimated number of

hours of absence from work that will be required;

(7) Method or basis of compensation (e.g. whether fee basis, per diem, per annum, or other).

(d) *Office-holding in professional societies.* The request should be submitted in memorandum form and should show all information pertinent to the activity and the reasons why the employee considers that such activity would not constitute a conflict of interest.

§ 73.735-903 Acting on employee requests.

(a) Requests must be thoroughly reviewed to insure that the outside activity for which approval is being sought is permissible under applicable statutes and regulations. The review should be conducted by an individual conversant with the statutes and regulations. As required, advice and guidance should be obtained from the Department Counsellor or Deputy Counsellors on employee conduct (§ 73.735-104).

(b) The review should appraise the request in terms of:

(1) Compliance with statutes, regulations;

(2) Conflicts or apparent conflicts of interest; and

(3) Potential problems arising from the employee's participation in the outside activity which could result in embarrassment to the Department or the employee.

(c) The approving official must satisfy himself on all these points before granting approval. Any conflict or apparent conflict of interest questions must be resolved before action is taken. The Department Counsellor or Deputy Counsellors on employee conduct will furnish advice and assistance as needed by the approving official.

(d) The approving official should indicate his action in writing in response to the employee's written request. The record on each request should be complete and contain the written request and written notification of action taken on the request.

(e) Requests for approval to perform professional or consultative services involving institutions or government units which have recently negotiated, or may in the near future seek contracts or grants from the Federal government will be granted only after any conflict or apparent conflict of interest matters have been identified and resolved.

§ 73.735-904 Annual reporting.

On September 5 each year, the approving officer shall require a report from each person for whom outside work has been approved during the past year. The report shall follow the format prescribed in Appendix G to this part and shall show:

(a) *For the 12 months just past (ending August 31).* (1) Whether the anticipated work was actually performed for the person or organization named in the request for approval;

(2) Actual amount of time spent on the activity.

(b) *For the forthcoming 12 months (ending August 31).* (1) Whether it is anticipated that the outside work will continue;

(2) Whether any change is anticipated with respect to information supplied in accordance with the original request on which approval was based.

§ 73.735-905 Maintenance of records.

All requests for approval of outside work or of participation in a matter in which an employee has a financial interest (or copies of such requests), a copy of the notification of approval or disapproval, and the annual report shall be filed at a level where they are readily available to the Secretary. This level shall be that of the approving official or higher. These records will be treated as Personnel-Confidential and made available only to persons specifically authorized by the Secretary.

Subpart J—Statements of Employment and Financial Interest

§ 73.735-1001 General.

(a) The requirements of this subpart are in addition to and not in substitution for, the requirements of Subpart I of this part concerning administrative approval for certain activities. Also, the requirements of this subpart are in addition to and not in substitution for, or in derogation of, any similar requirement otherwise imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 73.735-1002 Applicability.

(a) The following employees shall submit statements of employment and financial interest in accordance with the provisions of this subpart:

(1) Employees paid at a level of the Executive Schedule in subchapter II of Chapter 53 of title 5, United States Code.

(2) Employees in positions classified at GS-13 or above (or comparable pay level) specifically identified by the Secretary which have basic duties and responsibilities which require the incumbent to exercise judgment in making a Government decision or in taking Government action in regard to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing private or other non-Federal enterprise, or other activities where the decision or action has an economic impact on the interest of any non-Federal enterprise;

(3) Any other positions classified at GS-13 or above (or comparable pay level) specifically identified as positions determined by the Secretary as requiring the incumbent thereof to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the requirements and intent of standards of ethical conduct.

(4) Any other positions classified below GS-13 (or comparable pay level) specifically identified by the Secretary (and justified to and approved by the Civil Service) as requiring the incumbent thereof to report employment and financial interests in order to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(b) As new positions are established or duties of other positions change to bring them within the criteria stated in paragraph (a) (2), (3), or (4) of this section they shall be identified and reported to the appropriate office for inclusion. Exclusion of such positions from this requirement may be made when the Secretary determines that the duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests by the incumbent is not necessary because of the degree of supervision and review over the incumbent and the remote and inconsequential effect on the integrity of the Government. Exclusions under this provision must be documented in writing and retained at the level of the determining official.

(c) Employees shall have the opportunity for review through the Department's grievance procedure of a complaint that his position has been improperly included under this subpart as one requiring the submission of a statement of employment and financial interests.

§ 73.735-1003 Content of statements.

(a) The statements of employment and financial interests shall follow the format prescribed in Appendix D to this part.

(b) The interest of a spouse, minor child, or other blood relative who is a resident of the employee's household is considered to be an interest of the employee, and shall be reported on the statement.

(c) If any information required to be included on the statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(d) An employee is not required to submit on the statement any information relative to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the

Government are deemed "business enterprises" and are required to be included.

§ 73.735-1004 Submission and review of statements.

(a) Officials responsible for reviewing employment and financial interests shall be the same as by those who are designated to consider requests for administrative approval as discussed in Subpart I of this part.

(b) Reviewing officials shall request that statements of employment and financial interests be submitted by employees covered by § 73.735-1002, in accordance with the following schedule:

(1) September 30, 1967, if employed before September 1, 1967; or

(2) Thirty days after he becomes subject to the reporting requirements by occupying a position covered by § 73.735-1102, if he occupies the position after August 1, 1967.

(3) Changes in, or additions to, the information contained in the statement shall be reported in a supplementary statement as of June 30, of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest, provisions of section 208 of title 18, United States Code, or Subpart E of this part.

(c) Statements shall be submitted in one copy only.

(d) The reviewing officer shall review statements to determine whether conflicts of interest or apparent conflicts might arise from the activities reported thereon.

(e) When no conflict of interest or apparent conflict is disclosed by the review of the statements, no further action is necessary by the reviewing officer and the statements shall be filed in accordance with § 73.735-1005.

(f) When a question on conflict of interest or apparent conflict arises, the reviewing officer shall work with the employee to resolve the matter.

He shall offer the employee or special Government employee an opportunity to explain the conflict or apparent conflict. If the question cannot be resolved the matter shall be reported to the Secretary through the appropriate counselor or deputy counselor for further consideration and action.

§ 73.735-1005 Maintenance of records.

Statements on which questions of conflict of interest or apparent conflict have arisen shall be annotated to show the action taken. All statements and supplementary statements of employment and financial interests shall be filed at a level where they are readily available to the Secretary. This level shall be that of the approving official or higher. These records shall be treated as Personnel-Confidential and made available only as specifically authorized by the Secretary or the Office of Personnel Management for good cause shown. Each employee who is responsible for reviewing or retaining statements of employment and financial interests shall maintain each such statement in confidence and shall not allow access to, or information to be disclosed from a statement except to carry out the purpose of this part.

Subpart K—Disciplinary and Remedial Action

§ 73.735-1101 Disciplinary action.

(a) Violation of the regulations contained in this part may be cause for disciplinary action which may be in addition to any penalty prescribed by law.

(b) The type of disciplinary action to be taken shall be determined in relation to the specific violation. No standard table of penalties has been established for application in the Department. Those responsible for recommending and for taking disciplinary action must apply judgment to each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees and maintaining high standards of employee conduct and public confidence. Some types of disciplinary actions to be considered are:

(1) Oral admonishment.

(2) Written reprimand.

(3) Reassignment.

(4) Demotion.

(5) Suspension.

(6) Separation.

(c) Demotion, suspension, and separation are adverse actions and when taken must follow law, Civil Service Regulations and Department procedures.

§ 73.735-1102 Remedial action.

(a) Where the statements of employment and financial interest of employees or special Government employees, filed under the provisions of Subparts J and L of this part, show a conflict of interest with their official responsibilities, consideration should be given by the agency head or his designee and the employee's supervisor to reconciling the conflict through remedial actions. The following are examples of such actions which may be appropriate:

(1) Divestment by the employee or special Government employee of his conflicting interest.

(2) Disqualification for a particular assignment.

(3) Changes in assigned duties.

(b) Remedial action shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart L—Special Provisions Relating to Special Government Employees and Consultants

§ 73.735-1201 Applicability.

The requirements of this subpart apply to the group of employees designated by law (18 U.S.C. 202) as "special Government employees." The term includes employees who are retained, designated, appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis. This subpart applies to all consultants (defined in § 73.735-1205) even though the consultant who works more than 130 days in 365 is subject also to the regulations in this Part 73 as a regular employee. Sections 73.735-1205 and 73.735-1206 apply only to those special Government employees indicated. Intermittent employees are subject to the political activity restrictions of subchapter III of Chapter 73 of title 5, U.S.C. (the former Hatch Act) and Rule IV when in active duty status only and for the entire 24 hours of any day of actual employment.

§ 73.735-1202 Ethical standards of conduct.

(a) A special Government employee must conduct himself according to ethical behavior of the highest order. In particular,

(1) He must refrain from any use of his office which is, or appears to be, motivated by a private gain for himself or other persons, particularly those with whom he has family, business, or financial ties. The fact that the desired gain, if it materializes, will not take place at the expense of the Government makes his actions no less improper.

(2) He must conduct himself in a manner devoid of any suggestion that he is exploiting his Government employment for private advantage. He must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his family or business associates, in commodities, land, or the securities of any private company. He must obey this injunction even though his duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He should be careful in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his Government work.

(3) He must not use information not generally available to those outside the Government for the special benefit of a business or other entity by which he is employed or retained or in which he has a financial interest. Information not available to private industry should remain confidential in his hands and not divulged to his private employer or client. In cases of doubt whether information is generally available to the public, the special Government employee should confer with the person who assigns work to him, with the office having functional responsibility for a specific type of in-

formation, or, as appropriate, with the officials designated in § 73.735-104 to give interpretive and advisory service.

(4) He must, where requested by a private enterprise to act for it in a consultant or advisory capacity and the request appears motivated by the desire for inside information, make a choice between acceptance of the tendered private employment and continuation of his Government consultancy. He may not engage in both.

(5) He must not use his position in any way to coerce, or give the appearance of coercing, anyone to provide a financial benefit to him or another person, particularly one with whom he has family, business, or financial ties.

(6) He must not receive or solicit anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties if the acceptance would result in loss of complete independence or impartiality in serving the Government.

(7) He may teach, lecture, publish, or write in a manner not inconsistent with the regulations in §§ 73.735-403 to 73.735-405 for such activities for regular employees.

(b) A special Government employee who has questions about conflicts of interest or the application of the regulations in this part to him or his assigned work should make inquiry of the person who assigns his work. That person will direct him to the counselor or a deputy counselor for interpretative and advisory services as provided in § 73.735-104.

§ 73.735-1203 Statement of financial interests required.

(a) Each special Government employee described in §§ 73.735-1205 and 73.735-1206 must submit a statement which reports:

(1) All other employment; and

(2) The financial interests which relate either directly or indirectly to his duties and responsibilities.

(b) He shall submit such statement not later than the time of employment, and shall keep it current throughout the period of employment by the submission of supplementary statements.

(c) The format prescribed in Appendix E to this part shall be used for recording the information required by paragraph (a) of this section.

(d) Officials responsible for reviewing statements of employment and financial interests shall be the same as those designated to give administrative approval to outside work or regular employees unless the Secretary designates another official to be responsible for such review. When no conflict of interest is disclosed by the review of the statements, no further action is necessary by the reviewing officer and the statement shall be filed in accordance with paragraph (e) of this section. When a question of conflict of interest arises, the reviewing officer shall work with the consultant or special Government employee to resolve the matter or shall refer the question to the appropriate counselor or a deputy counselor for further consideration and advisement.

(e) A confidential file of completed statements of employment and financial interests shall be maintained in the personnel office that maintains the official personnel folder (but not in the personnel folder), together with correspondence, memorandum, etc., relating specifically thereto. These forms and related materials are not forwarded to the Federal Records Center upon separation of the employee but are disposed of in accordance with the appropriate disposal schedule.

§ 73.735-1204 Special Government employees who must submit statement of financial interests.

(a) The statements of financial interests described in § 73.735-1203 must be submitted by the following special Government employees:

(1) Consultants, experts, or advisers (hereafter referred to in this subpart as consultants) described in § 73.735-1205;

(2) Such special Government employees (other than consultants) as the heads of operating agencies so determine (in accordance with § 73.735-1206).

§ 73.735-1205 Coverage—consultants.

(a) As used in this subpart, the term consultant refers to a person whose advice the Department obtains on a temporary (either full or part-time) or intermittent basis because of his individual qualifications, and who serves as an officer or employee of the Government for the periods during which his advice is obtained. Where this definition is met, the consultant (except for any excluded in paragraph (b) of this section) is subject to this subpart irrespective of:

(1) The title by which he is designated;

(2) The statutory authority under which his services are obtained;

(3) The duration of the period for which his services are obtained (and whether or not limited to 130 days within the period of employment);

(4) Whether his services are obtained by appointment or invitation and acceptance. (A consultant whose services are obtained by contract is also subject to this subpart if his relationship to the Department is that of an employee. Such condition will exist only through error or misunderstanding, as Department instructions require that a person whose relationship to the Department is that of an employee shall be appointed. Only where there is not to be such relationship shall a formal contract be processed.)

(5) Whether services are compensated or rendered without compensation;

(6) Whether or not services are obtained pursuant to a statute exempting persons rendering services from conflict of interest statutes.

(b) This subpart need not be applied to:

(1) Doctors, dentists, and allied medical specialists performing services for, or consulted as to the diagnosis or treatment of, individual patients;

(2) Veterinarians performing services for or consulted as to care and service to animals.

§ 73.735-1206 Coverage—special Government employees other than consultants.

Coverage by § 73.735-1203 requiring the submission of a statement of financial interests is waived for special Government employees (other than consultants) except those identified by the Secretary. The identification may be made because of the nature of the duties, or because of the nature of the principal employment, which is nongovernmental. For example, a special Government employee, even though not a consultant, may be made subject to § 73.735-1203 if:

(a) The performance of his Department duties could directly and predictably affect a person or organization that is known to: Have a grant from this Department or contract with it; be seeking or negotiating such grant or contract; conduct an operation that is subject to regulation by the Department.

(b) His principal occupation or employment is not his Government employment and is of such nature that being made subject to § 73.735-1203 is desirable to protect him and the Department from possible conflict-of-interest situations: Viz, those whose principal non-Government occupation is: On or concerned with work for the Government or supported in whole or in part by the Government under grant or contract; on or concerned with work for which Government support is being sought; in any category of work which the Secretary determines should be subject to § 73.735-1203.

§ 73.735-1207 Restrictions—conflict-of-interest statutes.

(a) Each consultant and special Government employee covered by this subpart should acquaint himself in particular with sections of Title 18 numbered 203, 205, 207, and 208, all of which carry criminal penalties. The restraints imposed by the four criminal sections are summarized in paragraphs (b) through (d) of this section.

(b) 18 U.S.C. 203 and 205.

(1) These two sections in general operate to preclude a regular Government employee, except in the discharge of his official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections

impose only the following major restrictions upon a special Government employee:

(i) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially in the course of his Government employment.

(ii) He may not, except in the discharge of his official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the Department. However, this restraint is not applicable if he has served the agency no more than 60 days during the past 365. He is bound by the restraint, if applicable, regardless of whether the matter is one in which he has ever participated personally and substantially. These restrictions prohibit both paid and unpaid representation and apply to a special Government employee when he does not serve the Government as well as on the days when he does.

(2) To a considerable extent the prohibitions of sections 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, it is desirable that a consultant or adviser or other individual who is a special Government employee, even when not compelled to do so by sections 203 and 205, should make every effort in his private work to avoid any personal contact with respect to negotiations for contracts or grants with the Department if the subject matter is related to the subject matter of his consultancy or other service. This will not always be possible to achieve where, for example, a consultant or adviser has an executive position and responsibility with his regular employer which requires him to participate personally in contract negotiations with the Department. Whenever this is the case the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible Government official. In other instances an occasional consultant or adviser may have technical knowledge which is indispensable to his regular employer in his efforts to formulate a research and development contract or a research grant and for the same reason, it is in the interest of the Government that he should take part in negotiations for his private employer. Again, he should participate only with the knowledge of a responsible Government official.

(3) Section 205 contains an exemptive provision dealing with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he would otherwise be disqualified because he had participated in the matter for the Government or it is pending in an agency he had served more than 60 days in the past year. The provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the Secretary must first make a certification in writing, published in the FEDERAL REGISTER, that it is required by the national interest.

(4) Section 205 contains three other exemptive provisions, all of which apply to both special and regular Government employees. The first permits one Government employee to represent another without compensation, in a disciplinary, loyalty or other personnel matter. The second permits a Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate he serves as a fiduciary, but only if he has the approval of the official responsible for appointments to his position and the matter involved is neither one in which he has participated personally

or substantially, nor one under his official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. The third provision removes any obstacle in section 205 to a Government employee's giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

(c) 18 U.S.C. 207. Section 207 applies to individuals who have left Government service, including former special government employees. It prevents a former employee from representing another person in connection with certain matters in which he participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207 prevents a former employee, for a period of 2 years after his employment has ceased, from appearing personally for another person in such matters before a court, department or agency if the matters were within the area of his official responsibility (note that a consultant or adviser usually does not have "official responsibility") at any time during the last year of this Government service. The employment of a special Government employee ceases on the day his appointment expires or is otherwise terminated, as distinguished from the day on which he last performs service.

(d) 18 U.S.C. 208. This section bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his knowledge, he, his spouse, minor child, partner, or a profit or nonprofit enterprise with which he is connected has a financial interest. However, the section permits an employee's agency to grant him an ad hoc exemption if the interest is not so substantial as to affect the integrity of his services. Insignificant interests may also be waived by a general rule or regulation. The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207. Section 208 therefore undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may of course be exercised also where the financial interests involved are minimal in value.

[45 FR 30841, May 9, 1980; 45 FR 37426, June 3, 1980]

§ 73.735-1208 Requesting waivers or exemptions.

(a) A consultant or special Government employee may present in writing to the official who assigns his work requests for the waivers or exemptions discussed in § 73.735-1207(b), (c), and (d). That official will take, or refer the request for, action as appropriate, and will see that the employee receives advice or decision on his request.

(b) A file of all waivers or exemptions granted shall be maintained in such manner that information can be given promptly on individual cases or statistics provided upon request. Unless the Secretary specifically provides for maintenance elsewhere, these records, together with written advice given in connection with less formal requests concerning questions of ethical standards, are kept with the employee's statement of employment and financial interests, required to be filed in the personnel office in accordance with § 73.735-1203(d).

§ 73.735-1209 Salary from two sources.

Special Government employees are not subject to 18 U.S.C. 209 which prohibits other employees from receiving any salary, or supplementation of Government salary from a private source as a compensation for services to the Government. As a matter of policy this Department will not knowingly pay per diem to a consultant who also receives per diem pay for the same day from another Government agency (in or outside the Department).

APPENDIX A—INDEX TO SOME STATUTES AND EXECUTIVE ORDERS RELATED TO CONFLICT OF INTEREST AND OTHER PROHIBITED ACTIVITIES

SUBJECT AND CITATION

A. *Relating to Present Employees.*

1. Code of Ethics for Government Service (H. Con. Res. 175, 85th Cong., 2d sess., 72 Stat. B12).

2. Acceptance of gift or favor made with intent of influencing decision or action on any official matter (18 U.S.C. 201).

3. Compensation from outside sources for services rendered in relation to any application, proceeding, contract, etc., in any matter in which the United States has a direct and substantial interest (18 U.S.C. 203).

4. Acting as agent or attorney (1) for prosecution or aiding in prosecution of any claim against the United States, or (2) for anyone before any Department, agency, court, etc., in connection with a particular matter in which the United States is a party or has a direct and substantial interest (18 U.S.C. 205).

5. Participating personally and substantially as a Government employee in any application, request for a ruling, contract or other particular matter in which he, to his knowledge, or his spouse, minor child, or any organization with which he is negotiating, has a financial interest, direct or indirect (18 U.S.C. 208).

6. Receipt of any salary or contribution to or supplementation of salary as compensation for services as a Government employee from any other source than the Government (18 U.S.C. 209).

7. Use of appropriated funds, services, or communications with intent to influence any member of Congress to favor or oppose any legislation or appropriation (18 U.S.C. 1913).

8. Participation in strike against Government (5 U.S.C. 7311, 18 U.S.C. 1918).

9. Advocating the overthrow of the constitutional form of Government in the United States or being a member of an organization that so advocates (5 U.S.C. 7311).

10. Being a member of the Communist Party of the United States of America, and contributing funds or services to that party (50 U.S.C. 784).

11. Disclosing confidential information or classified information (18 U.S.C. 798, 50 U.S.C. 783, 18 U.S.C. 1905).

12. Habitual use of intoxicants to excess (5 U.S.C. 7352).

13. Using or authorizing the use of Government automobiles for other than official purposes (13 U.S.C. 635a(c)).

14. Using official envelope or label to avoid payment of postage (18 U.S.C. 1719).

15. Deceiving in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

16. Practicing fraud or making false statements in a Government matter (18 U.S.C. 1001).

17. Mutilating or destroying a public record (18 U.S.C. 2071).

18. Falsely making, forging, or attempting to pass a forged or altered travel request (18 U.S.C. 508).

19. Taking for own use or use of another any Government record, voucher, money, or thing of value (18 U.S.C. 641).

20. Failure to account for public money received (18 U.S.C. 643).

21. Embezzling money or property of another person in the possession of an employee by reason of this employment (18 U.S.C. 654).

22. Taking or attempting to use vouchers or documents intended to be used to procure payments by the United States (18 U.S.C. 285).

23. Prohibition against certain political activities (subchapter III of Chapter 73 of title 5, U.S.C. (former Hatch Act) and 18 U.S.C. 602, 603, 607, and 608).

24. Making or soliciting gifts for official superiors, or accepting gifts from employees receiving a lower salary (5 U.S.C. 7351).

25. Conviction for participating in or organizing or inciting a riot or civil disorder (5 U.S.C. 7313).

26. Nondiscrimination in Government employment (E.O. 11246, 30 FR 12319).

27. Acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

B. *Relating to Former Employees.*

28. After having been employed by the United States,

a. At any time after his employment has ceased, acting as agent or attorney for anyone other than the Government in connection with any application, contract, claim, proceeding or other matter against the United States, involving a specific party, in any matter in which the United States has an interest, and in which he participated personally and substantially as a Government employee.

b. Within 2 years after his employment has ceased, appearing personally before any agency in connection with any application, contract, claim, proceeding, or other matter against the United States, involving a specific party, which was under his official responsibility as a Government employee (18 U.S.C. 207).

29. Prohibits any department, agency, or officer from supervision, direction, or control over, the personnel and projects assisted by the Act (20 U.S.C. 757).

30. National Defense Education Act: Restricts the receipt of payment in salary by an appointee in Government service from any source other than the private employer of the appointee (20 U.S.C. 583(a) (b)).

31. Area Redevelopment Act: Regarding restriction of financial assistance and employment to expediters and administrative employees who have occupied positions involving discretion within certain period (42 U.S.C. 2516).

32. Officers or employees of the Department owning interest in or receiving money or services from any educational institution operated for profit in which an eligible veteran is pursuing a course of education or training under the Veterans Readjustment Assistance Act of 1952 (sec. 264 of the Veterans Readjustment Assistance Act of 1952, Pub. L. 550, 82d Cong.).

APPENDIX B—PROFESSIONAL OCCUPATIONS

Following is a list of series of positions subject to Chapter 51 of title 5, United States Code that include professional positions. Positions not subject to that chapter should also be considered professional if the incumbents perform duties similar to the series listed.

015 Operations Research Series.
020 Urban Planning Series.
060 Chaplain Series.
101 Social Science Series.
102 Social Administration Series.
110 Economist Series.
130 Foreign Affairs Series.
131 International Relations Series.
135 Foreign Agricultural Affairs Series.
150 Geography Series.
170 History Series.
180 Psychology Series.
184 Sociology Series.
185 Social Work Series.
190 General Anthropolgy Series.
193 Archeology Series.
195 Scientific Linguistics Series.
401 Biology Series.
403 Microbiology Series.
405 Pharmacology Series.
406 Agricultural Extension Series.
410 Zoology Series.
411 Systematic Zoology Series.
412 Parasitology Series.
413 Physiology Series.
414 Entomology Series.
415 Nematology Series.
430 Botany Series.
433 Plant Taxonomy Series.
434 Plant Pathology Series.
435 Plant Physiology Series.
436 Plant Quarantine and Pest Control Series.
437 Horticulture Series.
440 Genetics Series.
450 General Agricultural Administration Series.
451 General Agriculture Series.
452 Park Naturalist Series.
454 Range Conservation Series.
457 Soil Conservation Series.
460 Forestry Series.
470 Soil Science Series.
471 Agronomy Series.
475 Farm Management Loan Series.
480 General Fish and Wildlife Administration Series.
482 Fishery Biology Series.
484 Animal Control Biology Series.
485 Wildlife Refuge Management Series.
486 Wildlife Biology Series.
487 Husbandry Series.
493 Home Economics Series.
510 Accounting Series.
512 Internal Revenue Agent Series
601 General Health Science Series.
602 Medical Officer Series.
610 Nurse Series.
615 Public Health Nurse Series.
630 Dietitian Series.
631 Occupational Therapist Series.
633 Physical Therapist Series.
635 Corrective Therapist Series.
637 Manual Arts Therapist Series.
639 Educational Therapist Series.
644 Medical Technologist Series.
660 Pharmacist Series.
662 Optometrist Series.
665 Speech Pathology and Audiology Series.
668 Podiatrist Series.
680 Dental Officer Series.
685 Public Health Program Specialist Series.
690 Industrial Hygiene Series.
695 Food and Drug Officer Series.
696 Food and Drug Inspection Series.
701 Veterinary Medical Sciences Series.
801 General Engineering Series.
803 Safety Engineering Series.
804 Fire Prevention Engineering Series.
806 Materials Engineering Series.
807 Landscape Architecture Series.
808 Architecture Series.

810 Civil Engineering Series.
819 Sanitary Engineering Series.
830 Mechanical Engineering Series.
840 Nuclear Engineering Series.
850 Electrical Engineering Series.
855 Electronic Engineering Series.
861 Aerospace Engineering Series.
870 Marine Engineering Series.
871 Naval Architecture Series.
880 Mining Engineering Series.
881 Petroleum Production and Natural-Gas Engineering Series.
890 Agricultural Engineering Series.
892 Ceramic Engineering Series.
893 Chemical Engineering Series.
894 Welding Engineering Series.
896 Industrial Engineering Series.
905 General Attorney Series.
920 Estate Tax Examining Series.
935 Hearing Examiner Series.
942 Deportation and Exclusion Examining Series.
954 Legal Assistance Series.
960 Adjudication Series.
1015 Museum Curator Series.
1210 Copyright Examining Series.
1220 Patent Administration Series.
1221 Patent Adviser Series.
1222 Patent Attorney Series.
1223 Patent Classifying Series.
1224 Patent Examining Series.
1225 Patent Interference Examining Series.
1226 Design Patent Examining Series.
1241 Trade-Mark Examining Series.
1301 General Physical Science Series.
1306 Health Physics Series
1310 Physics Series.
1313 Geophysics Series.
1315 Hydrology Series.
1320 Chemistry Series.
1321 Metallurgy Series.
1330 Astronomy and Space Science Series.
1340 Meteorology Series.
1350 Geology Series.
1360 Oceanography Series.
1370 Cartography Series.
1372 Geodesy Series.
1373 Cadastral Surveying Series.
1380 Forest Products Technology Series.
1382 Food Technology Series.
1384 Textile Technology Series.
1390 Technology Series.
1420 Archives Series.
1510 Actuary Series.
1520 Mathematics Series.
1529 Mathematical Statistician Series.
1530 Statistician Series.
1540 Cryptography Series.
1710 Education and Vocational Training Series.
1720 Education Research and Program Series.
1725 Public Health Educator Series.

APPENDIX C—[RESERVED]

APPENDIX D—CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS (FOR USE BY REGULAR GOVERNMENT EMPLOYEES)

EDITORIAL NOTE: This appendix was filed as part of original document published at 33 FR 5918, Apr. 17, 1968.

APPENDIX E—CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS (FOR USE BY SPECIAL GOVERNMENT EMPLOYEES)

EDITORIAL NOTE: This appendix was filed as part of original document published at 33 FR 5918, Apr. 17, 1968.

APPENDIX F—REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY [1]

APPENDIX G—ANNUAL REPORT OF OUTSIDE ACTIVITY [1]

APPENDIX H—CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

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[1] 35 FR 12909, Aug. 14, 1970.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

(This Code of Ethics was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the Second Session of the 85th Congress. The Code applies to all Government Employees and Office Holders.)

PART 74—ADMINISTRATION OF GRANTS

Subpart A—General

Sec.
74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.6 Deviations.
74.7 Special grant or subgrant conditions.

Subpart B—Cash Depositories

74.10 Physical segregation and eligibility.
74.11 Checks-paid basis letter of credit.
74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

74.15 General.
74.16 Construction and facility improvement.
74.17 Fidelity bonds.
74.18 Source of bonds.

Subpart D—Retention and Access Requirements for Records

74.20 Applicability.
74.21 Length of retention period.
74.22 Starting date of retention period.
74.23 Substitution of microfilm.
74.24 Access to records.
74.25 Restrictions on public access.

Subpart E—Waiver of Single State Agency Requirements

74.30 Policy.

Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program income.
74.42 General program income.
74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.
74.44 Program income—royalties and other income earned from a copyrighted work.
Sec.
74.45 Program income—royalties or equivalent income earned from patents or from inventions.
74.46 Program income—income after grant or subgrant support not otherwise treated.
74.47 Interest earned on advances of grant funds.

Subpart G—Cost Sharing or Matching

74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Valuation of donated services.
74.55 Valuation of donated supplies and loaned equipment or space.
74.56 Valuation of donated equipment, buildings, and land.
74.57 Appraisal of real property.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

74.60 Scope of subpart.
74.61 Standards.

Subpart I—Financial Reporting Requirements

74.70 Scope and applicability of subpart.
74.71 Definitions.
74.72 General.
74.73 Financial Status Report.
74.74 Federal Cash Transactions Report.
74.75 Request for Advance or Reimbursement.
74.76 Outlay report and request for reimbursement for construction programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of subpart.
74.81 Monitoring by recipients.
74.82 Performance reports under nonconstruction grants.
74.83 Performance reports under construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant and Subgrant Payment Requirements

74.90 Scope of subpart.
74.91 Definitions.
74.92 Basic standard.
74.93 Payment methods under nonconstruction grants.
74.94 Payment methods under construction grants.
74.95 Withholding of payments.

Sec.
74.96 Requesting advances or reimbursements.
74.97 Payments to subgrantees.

Subpart L—Programmatic Changes and Budget Revisions

74.100 Scope and applicability of this subpart.
74.101 Relationship to cost principles.
74.102 Prior approval procedures.
74.103 Programmatic changes.
74.104 Budgets generally.
74.105 Budget revisions-nonconstruction projects.
74.106 Budget revisions-construction projects.
74.107 Construction and nonconstruction work under the same grant or subgrant.
74.108 Authorized funds exceeding needs.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Amounts payable to the Federal Government.
74.113 Violation of terms.
74.114 Suspension.
74.115 Termination.
74.116 Applicability to subgrants.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 Authorized forms and instructions for governmental organizations.
74.122 Preapplications for Federal Assistance for governmental organizations.
74.123 Notice of preapplication review action for governmental organizations.
74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.
74.125 Application for Federal assistance (for construction programs) for governmental organizations.
74.126 Application for Federal assistance (short form) for governmental organizations.
74.127 Authorized forms and instructions for nongovernmental organizations.

Subpart O—Property

GENERAL

74.130 Scope and applicability of this subpart.
74.131 Prohibition against additional requirements.
74.132 Definitions.
74.133 Title to real property, equipment, and supplies.

REAL PROPERTY

Sec.
74.134 Real property.

EQUIPMENT AND SUPPLIES

74.135 Exemptions for equipment and supplies subject to certain statutes.
74.136 Rights to require transfer of equipment.
74.137 Use of equipment.
74.138 Replacement of equipment.
74.139 Disposition of equipment.
74.140 Equipment management requirements.
74.141 Supplies.

FEDERAL SHARE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES

74.142 Federal share of property.
74.143 Subgrantee's share of market value or sales proceeds.

INTANGIBLE PERSONAL PROPERTY

74.144 Inventions and patents.
74.145 Copyrights.

Subpart P—Procurement Standards

74.160 Scope of subpart; terminology.
74.161 General.
74.162 Code of conduct.
74.163 Free competition.
74.164 Procedural requirements.
74.165 Requirement for governments to use formal advertising.
74.166 Contract provisions.

Subpart Q—Cost Principles

74.170 Scope of subpart.
74.171 Governments.
74.172 Institutions of higher education.
74.173 Hospitals.
74.174 Other nonprofit organizations.
74.175 Subgrants and cost-type contracts.
74.176 Costs allowable with approval.

APPENDIX A—[RESERVED]
APPENDIX B—[RESERVED]
APPENDIX C—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS
APPENDIX D—PART I—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS
PART II—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO TRAINING AND OTHER EDUCATIONAL SERVICES UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS
APPENDIX E—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH HOSPITALS

APPENDIX F—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH NONPROFIT INSTITUTIONS

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Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of ED grants and principles for determining costs applicable to activities assisted by ED grants.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, ED, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"ED" means the U.S. Department of Education.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See Subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interestate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee. (See § 74.4(b).)

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants. However, unless expressly made applicable by ED, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by ED this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of ED may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Except as provided in paragraph (d) of this section, a deviation from this part may be made only when authorized by the Secretary.

§ 74.7 Special grant or subgrant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this Part 74 may be imposed as needed when ED has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circulars A-102 and A-110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

(c) Grantees may apply the provisions of paragraphs (a) and (b) of this section to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to ED.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, ED will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvement.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the Secretary has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) If the grantee is not a government, ED may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, ED or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under § 74.16(d)(1) through (3) or § 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR, Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an ED grant, or

(2) Otherwise reasonably considered as pertinent to an ED grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where ED grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to ED its single or last expenditure report for that period. However, if ED grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to ED its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to ED. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an ED requirement concerning the disposition of program income, as defined in Subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an ED requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See Subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans under Appendix C to this part; and

(iii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* The Secretary and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* The Secretary, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), the Secretary, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant or subgrant terms which limit public access to records covered by this subpart except after a determination by ED that the records must be kept confidential and would have been excepted from disclosure under ED's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to ED. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E—Waiver of Single State Agency Requirements

§ 74.30 Policy.

Requests to ED from Governors, or other duly constituted State authorities, for waiver of single State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 will be given expeditious handling. Whenever possible, such requests will be granted.

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part or all of the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between ED and a grantee covering all of ED's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of such revenues shall be recorded as a part of grant or subgrant project transactions when such revenues are specifically earmarked for the project in accordance with the terms of the grant or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) of this section may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(2) The terms of a subgrant may restrict the use of general program income earned by the subgrantee to only one or some of the alternatives permitted by the terms of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that percentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid,

since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to ED grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under ED's patent regulations. (See Parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 74.46 Program income—income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to

80-112 O—82——9

this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), grantees shall remit to the Federal Government any interest or other investment income earned on advances of ED grant funds. This includes any interest or investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of ED grant funds to the grantee. Unless the grantee receives other instructions from the responsible ED official, the grantee shall remit the amount due by check or money order payable to the Department of Education.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), States, as defined in the act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the act (42 U.S.C. 4213).[1]

(c) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) ED and a grantee may enter into an institutional cost-sharing agreement covering all of ED's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

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[1] "State" is defined in the act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the act to exclude "payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private." (42 U.S.C. 4201)

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* (1) Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(2) For the purposes of this part, general revenue sharing funds under 31 U.S.C. 1221 are not considered a Federal grant. Therefore, in the absence of any provision of Federal statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an ED grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the ED grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings, or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant or subgrant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the ED grant may require that the approval be obtained from ED as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, ED may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. For subgrants, this requirement may also be imposed by the grantee.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant- and subgrant-supported activities. Awarding parties shall not impose additional standards on recipients unless specifically provided for in a Federal statute (e.g. the Joint Funding Simplification Act, Pub. L. 93-510) or these regulations. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant- or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by Subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See Subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audits*—(1) *General.* External or internal audits shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations Programs, Activities, and Functions."[1] The auditors engaged by the recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, noth-

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[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

ing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to ED.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope and applicability of subpart.

(a) This subpart prescribes requirements and forms for grantees to report financial information to ED, and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by grantees in dealing with their subgrantees. However, grantees are encouraged not to impose on subgrantees more burdensome requirements than ED imposes on grantees.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third-party in-kind contributions" as defined in Subpart G of this part.

"Obligations" are the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in Subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by ED, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. ED may issue substantive supplementary instructions. ED may shade out or instruct the grantee to disregard any line item that ED finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) ED may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. ED may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When ED has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) ED may waive any report required by this subpart if not needed.

(g) ED may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* ED may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If ED does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any ED payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the ED payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the ED payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the ED payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to ED using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73 (c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) ED may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where ED determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, ED will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by ED. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless ED requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. ED may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, ED may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

(e) Grantees shall adhere to the standards in paragraphs (a) through (d) of this section in prescribing performance reporting requirements for subgrantees.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants and subgrants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of ED to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which ED will make grant payments to grantees, and grantees will make subgrant payments to their subgrantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay ED grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the ED payment office for at least a year and the total amount of advances to be received from the ED payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to ED the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a) (2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any ED construction grant unless ED has entered into an agreement with the grantee to use a letter of credit for all ED grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) ED will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, ED's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, ED may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in Subpart I of this part.

§ 74.97 Payments to subgrantees.

Grantees shall observe the requirements of this subpart in making (or withholding) payments to subgrantees, with the following exceptions:

(a) Advance payment by check may be used instead of letter of credit;

(b) The forms specified in Subpart I of this part for requesting advances and reimbursements are not required to be used by subgrantees; and

(c) The reimbursement by check method may be used to pay any construction subgrant, whether or not ED has agreed to use a letter of credit for all direct ED grants to that same recipient.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory grants.* Sections 74.103 through 74.106 do not apply to programmatic changes or budget revisions made by grantees under State plan or other grants which ED is required by law to award if the applicant meets all applicable requirements for entitlement. (These are generally called "mandatory" or "formula" grants.)

(c) *Exemption of certain subgrants.* Sections 74.103 through 74.106 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices C, D, and F to this part contain requirements for prior approval of certain types of costs (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible ED grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized ED official.

(b) *For subgrants.* Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required by this subpart and for giving or denying the approval. A grantee shall not approve any action which is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee will result in a change in the overall grant project or budget requiring ED approval, the grantee shall obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project.

(For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Providing financial assistance to a third party by subgranting or any other means.

(2) Tranferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(3) Providing medical care to individuals under research grants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant or subgrant.

When a grant or subgrant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definitions.

"Grant closeout" means the process by which ED determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and ED.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by ED to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out ED grants, the following shall be observed:

(1) Upon request, ED shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from ED, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. ED may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) ED shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c) (1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See Subpart D of this part.

(2) If a grant is closed out without audit, ED retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under Sub-

part O of this part, or with respect to any program income for which the grantee is still accountable under Subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see Subpart F of this part);

(d) Any amounts due the Federal Government under Subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering ED's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to ED or given evidence satisfactory to ED that such corrective action will be taken, or until ED terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless ED expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of ED, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* ED may terminate any grant in whole, or in part, at any time before the date of expiration, whenever ED determines that the grantee has materially failed to comply with the terms of the grant. ED shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By ED with the consent of the grantee, in which case the two parties shall agree upon the termination con-

ditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to ED, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, ED determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, ED may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ED will allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

§ 74.116 Applicability to subgrants.

Grantees shall adhere to the same standards regarding closeout, suspension, and termination of subgrants as are prescribed in this subpart for ED.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to ED for grants. This subpart is not applicable, however, to mandatory or formula grant programs which do not require applicants to apply to ED for funds on a project basis.

(b) This subpart permits ED to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

§ 74.121 Authorized forms and instructions for governmental organizations.

(a) In applying to ED for grants, governments shall use only the forms specified in §§ 74.122 through 74.126, and such supplementary or other forms as may from time to time be prescribed by ED.

(b) Governments will not be required to submit more than the original and two copies of their applications.

(c) Governments shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.122 through 74.126. ED may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of the Secretary. For any form, ED may shade out or instruct the applicant to disregard any line item that is not needed.

(d) When a government applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the facesheet and any other affected pages need be submitted. Previously submitted pages whose information is still current need not be resubmitted.

§ 74.122 Preapplications for Federal assistance for governmental organizations.

(a) When a preapplication is submitted by a government, the preapplication for Federal assistance form prescribed by OMB Circular A-102 shall be used. The purposes of preapplications shall be to:

(1) Establish communication between the applicant and ED;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others in order to discourage pro-

posals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. The Secretary may require preapplications regardless of the type of project and regardless of the estimated amount of Federal funding. In addition, any government may submit a preapplication even when not required by ED.

§ 74.123 Notice of preapplication review action for governmental organizations.

The notice of preapplication review action form prescribed by attachment M of OMB Circular No. A-102 will be used by ED to inform governmental applicants of the results of the review of the preapplications submitted to them. ED will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form. If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.

The applicant for Federal assistance (nonconstruction programs) form prescribed by attachment M of OMB Circular No. A-102 shall be used by governments in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal assistance (for construction programs) for governmental organizations.

The applicant for Federal assistance (for construction programs) form prescribed by attachment M of OMB Circular No. A-102 shall be used by governments in applying for any grant whose purpose is soley or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal assistance (short form) for governmental organizations.

The applicant for Federal assistance (short form) form prescribed by attachment M of OMB Circular No. A-102 shall be used by governments in applying for any single-purpose one-time grant of less than $10,000 not requiring clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. ED may authorize or prescribe this form for applications for larger amounts.

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by ED, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by attachment A. part I, of OMB Circular No. A-95.

Subpart O—Property

GENERAL

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

REAL PROPERTY

§ 74.134 Real property.

Except as otherwise provided by federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addi-

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tion to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the Secretary may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from ED to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of ED shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by ED. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

EQUIPMENT AND SUPPLIES

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *ED right.* For items of equipment having a unit acquisition cost of $1,000 or more, ED shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by ED. This right will normally be exercised by ED only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for ED to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of ED grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Right of parties awarding subgrants.* When a grantee awards a subgrant, it may reserve for itself a right similar to that in paragraph (a) of this section for items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of ED the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subgrantee and only for the purpose of transferring the equipment to the new subgrantee for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137 Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by ED.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by ED.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless ED provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from ED the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if ED approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

FEDERAL SHARE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions. Moreover, if the property was acquired by a grantee that awarded subgrants, costs incurred by its subgrantees shall be included only to the extent borne by the subgrants. (For example, if a subgrantee incurred $200,000 of project costs, of which $150,000 was borne by the subgrant, only the $150,000 shall be included in the grantee's costs.)

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as ex-

plained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to ED grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirement applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

INTANGIBLE PERSONAL PROPERTY

§ 74.144 Inventions and patents.

ED's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *ED rights.* If any copyrightable material is developed in the course of or under an ED grant or subgrant, ED shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes. A grantee awarding a subgrant may reserve a similar right for itself with respect to copyrightable material developed under that subgrant.

(d) *Exemption of student-developed works.* ED awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall not be subject to the ED right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another ED grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to ED, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, ED waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.[1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of ED if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Nongovernmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

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[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.
2. The Office of Minority Business Enterprise, Department of Commerce.
3. The Office for Civil Rights, ED.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this subpart, governmental recipients shall use formal advertising.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial intitial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental recipient, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *Executive Order 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR, Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to Parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR, Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 Governments.

The principles to be used in determining the allowable costs of activities conducted or administered by governments are in Appendix C to this part.

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

(a) *Nonconstruction awards.* Under nonconstruction awards, the principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations are in Appendix F to this part.

(b) *Construction awards.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction awards to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations).

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations under cost-type contracts awarded to them under ED grants are in 41 CFR, Chapter 34.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the awarding party. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b) (1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, ED's written approval may be signed by any authorized ED official.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

APPENDIX A—[RESERVED]

APPENDIX B—[RESERVED]

APPENDIX C—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

PART I—GENERAL

A. PURPOSE AND SCOPE

1. *Objectives.* This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied in determining costs incurred by State

and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with publicly financed educational institutions subject to Appendix D to this part.

B. DEFINITIONS

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost*, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means the Department of Education.

6. *Grant* means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

9. *Local unit* means any political subdivision of government below the State level.

10. *Other State or local agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. *Services*, as used herein, means goods and facilities, as well as services.

12. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting budgeting, auditing, mail and messenger service, and the like.

C. BASIC GUIDELINES

1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. COMPOSITION OF COST

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. DIRECT COSTS

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. INDIRECT COSTS

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. COST INCURRED BY AGENCIES OTHER THAN THE GRANTEE

1. *General.* The cost of service provided by other agencies only may include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. COST INCURRED BY GRANTEE DEPARTMENT FOR OTHERS

1. *General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

I. [RESERVED]

J. COST ALLOCATION PLAN

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational unit which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Education, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Education, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Education, in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Education.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Education in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Education.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with paragraphs 4. and 5. above, the Office of Management and Budget will lend assistance as required.

PART II—STANDARDS FOR SELECTED ITEMS OF COST

A. PURPOSE AND APPLICABILITY

1. *Objective.* This part provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this appendix.

B. ALLOWABLE COSTS

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio, and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services*—a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees;

(1) Is reasonable for the services rendered; (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor

market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution* of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health, and welfare costs.* The costs of health of first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowa-

ble. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities*—a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another, are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. COSTS ALLOWABLE WITH APPROVAL OF GRANTOR AGENCY

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the

program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs, and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Cost of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Cost of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in paragraph d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. UNALLOWABLE COSTS

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply

with. Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

APPENDIX D—PART I—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS

A. PURPOSE AND SCOPE

1. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.* The Department of Education will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should also be used as a guide in the pricing of fixed-price contracts or lump sum agreements.

B. DEFINITION OF TERMS

1. *Organized research* means all research activities of an institution that are separately budgeted and accounted for.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. *Research agreement* means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. *Other institutional activities* means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect costs (as defined in section E.1.) are properly allocable.

5. *Apportionment* means the process by which the indirect costs of the institution

are assigned as between (a) instruction and research, and (b) other institutional activities.

6. *Allocation* means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research, and (b) instruction, including departmental research.

7. *Stipulated salary support* is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. *Federal agency* or sponsoring agency means the Department of Education.

C. BASIC CONSIDERATIONS

1. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) They must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) Whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the research agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.* a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.* a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA, and

any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with Appendix C to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. DIRECT COSTS

1. *General.* Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. INDIRECT COSTS

1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses: and departmental administration expenses.

2. *Criteria for distribution—a. Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in paragraph c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in paragraph d. below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in paragraph b. above and paragraph d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration

expenses are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under paragraph b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.* Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this Appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

F. IDENTIFICATION AND ASSIGNMENT OF INDIRECT COSTS

1. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of

the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.* a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.* a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing the allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.* a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments and organized research units such as institutes, study centers and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries, and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like, provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.* a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (sections F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (section B.3).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. DETERMINATION AND APPLICATION OF INDIRECT COST RATE OR RATES

1. *Indirect cost pools.* a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under paragraph a. above, and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.* Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the

amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be approximately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87-638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

H. SIMPLIFIED METHOD FOR SMALL INSTITUTIONS

1. *General.* a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in paragraph 2., below, may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.* a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under paragraphs 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under paragraph 2.a. the amount of salaries and wages included under paragraph 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool paragraph 2.b. by the amount of the distribution base paragraph 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

I. [RESERVED]

J. GENERAL STANDARDS FOR SELECTED ITEMS OF COST

Sections J.1. through J.46. provide standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for: (a) The recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in section J.32; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.* Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.* Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services covers all remuneration paid currently or accured to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39.), and pension plan costs (see section J.23.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms

to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to (1) instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in paragraphs c., d., e., and f., below.

c. *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either:

(1) An adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where university-wide policies do not adequately define the permissible extent of consultantship or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.* Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution. Since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other paragraphs of J.7.

k. *Salary rates for part-time faculty.* Charges for work performed on Government research by a faculty member having only part-time appointment for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as

to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.* a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go to a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under paragraph d. above, would be viewed as fully depreciated provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee-performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertain-

ment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.* The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of one year or more.

a. *General purpose equipment.* Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction, or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.* Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

15. *Insurance and indemnification.* a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) Types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d. above.

16. *Interest, fund raising, and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of monies and securities are allowable.

17. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated

parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores' withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions, and professional activity costs.* a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.* Cost of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also section J.33.)

23. *Pension plan costs.* Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements, including wages, uniforms, and equipment of personnel engaged in plant protection, are allowable.

25. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable subject to paragraphs b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the in-

stitution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.* a. Subject to paragraphs b., c., and d. below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help-wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help-wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the costs of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.* Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.* Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J.39.)

36. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of paragraph a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.* a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of paragraph b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribution of the indirect costs.

38. *Special services costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.* a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See section J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see section J.23.), tuition or remission of tuition for individual employees or their families (see section J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.* Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.* a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (1) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to paragraphs c., d., e., and f. below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(1) Require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.* a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided: (1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if: (1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. CERTIFICATION OF CHARGES

To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

PART II—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO TRAINING AND OTHER EDUCATIONAL SERVICES UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS

A. *Purpose.* This part extends the scope of Part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.* The Department of Education will use Parts I and II of this Appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported education service agreements.

C. *Terminology.* The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this Part II:

1. *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to: (a) Grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional-type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of Part I) and all special training or other instructional-oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.* In addition to the five major functional categories of indirect costs described in section F of Part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administra-

tion of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. of Part I. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of Part I.

E. *Direct costs of educational service agreements.* Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of Part I.

F. *Indirect costs of the instruction activity.* The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of Part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of Part I.

G. *Indirect costs applicable to educational service agreements.* The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to: (1) Educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of Part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in section G.1.b. of Part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.* An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of Part I.

I. *General standards for selected items of cost.* The standards for selected items of cost as set forth in sections J.1. through J.46. of Part I applicable to research agreements will also be applied to educational service agreements with the following modifications:

1. *Commencement and convocation costs (section J.5.).* Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (section J.7.).* Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of Part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) Extra charges

are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs* (*section J.35.*). Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs* (*section J.40.*). Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs* (*section J.41.*). Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

APPENDIX E—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH HOSPITALS

I. PURPOSE AND SCOPE

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Education. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Education as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* When the Department of Education sponsors research and development work in hospitals, it will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. DEFINITIONS OF TERMS

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See paragraph III D below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in paragraph V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in paragraph IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research.
2. Patient care including departmental research.
3. Instruction and training, and
4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

II. BASIC CONSIDERATIONS

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See paragraph III-E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.
2. They must be assigned to research agreements under the standards and methods provided herein.
3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See paragraphs I-E.5.) and
4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,
2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,
3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employ-

ees, its students, the Government, and the public at large, and

4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in paragraph V-A. Typical examples of such transactions are: Purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. DIRECT COSTS

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in paragraph VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see paragraph V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. INDIRECT COSTS

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in paragraph VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in paragraph V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in section B.3. below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, paragraph VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under section B.2. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in sections B.2. and B.3. above.

b. Where any types of expense ordinary treated as indirect cost as outlined in paragraph V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in paragraph II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also paragraph VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. The terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. The amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. IDENTIFICATION AND ASSIGNMENT OF INDIRECT COSTS

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in paragraph IX-B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See paragraph IX-B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in paragraph V-B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where

the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in paragraph V-B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph V-B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph V-B, on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph V-B. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph V-B. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in paragraph V-B. on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph V-B. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph V-B. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. DETERMINATION AND APPLICATION OF INDIRECT COST RATE OR RATES

A. *Indirect cost pools.* 1. Subject to paragraph (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under paragraph (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to paragraph VII-A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. SIMPLIFIED METHOD FOR SMALL INSTITUTIONS

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in paragraph VIII-B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in paragraph IX-B.4 and unallowable costs as defined under various headings in paragraph IX and paragraph III-E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in paragraph VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The

third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under paragraph II-E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in paragraph VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in paragraph VIII-B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in paragraph III-E.1.

4. In applying the procedures in paragraphs VIII-B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under paragraphs VIII-B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All Other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under paragraphs VIII-B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under paragraph VIII-B.2.

IX. GENERAL STANDARDS FOR SELECTED ITEMS OF COST

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as;

a. Depreciation;

b. Rental;

c. Use charges for fully depreciated assets;

d. Idle facilities and idle capacity;

e. Plant reconversion;

f. Extraordinary or deferred maintenance and repair;

g. Acquisition of automatic data processing equipment.

2. Preaward costs;

3. Non-hospital professional activities;

4. Self-insurance;

5. Support services charged directly (computer services, printing and duplicating services, etc.);

6. Employee compensation, travel, and other personnel costs, including;

a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation.

b. Morale, health, welfare, and food service and dormitory costs.

c. Training and education costs.

d. Relocation costs, including special or mass personnel movement.

B. *Selected items*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in paragraph IX-B.34.

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraphs IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see paragraph IX-B.10), and pension plan costs (see paragraph IX-B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For nonprofit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and nonsponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in

determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in paragraph (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) Patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in paragraph V-A; or (5) other hospital activities as defined in paragraph II-E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under paragraph (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in paragraph (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by paragraph (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Pub. L. 89-97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966-67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Pub. L. 89-97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Education.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to paragraph 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) Types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Pub. L. 89-97 (Medicare Program) as defined under the "Principles Of Reimbursement

For Provider Costs" published by the Social Security Administration of the Department of Health and Human Services. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph IX-B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to paragraphs (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall

be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to paragraphs (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is con-

sidered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of paragraph (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of paragraph (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under paragraph III-E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in paragraph (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see paragraph IX-B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or

delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to paragraphs (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

APPENDIX F—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH NONPROFIT INSTITUTIONS

A. PURPOSE AND SCOPE

1. *Objectives.* This Appendix provides principles for determining the costs applicable to grants and contracts awarded by the Department of Education and performed by nonprofit organizations other than educational institutions, hospitals and State and local Government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of nonprofit institution.* (a) A nonprofit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals and (iii) State and local Governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise, shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a nonprofit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as nonprofit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms nonprofit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of paragraph 2.(a) are met.

3. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such governmentwide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.* These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Department of Education. The principles shall also apply to cost-reimbursement type contracts performed under ED grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

B. BASIC CONSIDERATIONS

1. *Composition of total cost.* The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is

equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.* Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.* A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to non-ED supported activities it must also use such standards to allocate costs to ED grants/contracts.

5. *Applicable credits.* The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. DIRECT COSTS

1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to an ED grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to

it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D-2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying, and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection, and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

D. INDIRECT COSTS

1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a non-profit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities, public relations, and membership activities, etc. (See section C-2.)

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Sub-grouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (1) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. DETERMINATION AND APPLICATION OF INDIRECT COST RATE OR RATES

1. *Indirect cost pools.* (a) Subject to paragraph (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under paragraph (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.* Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. APPLICATION OF PRINCIPLES AND PROCEDURES

1. Costs shall be allowed to the extent that they are reasonable (see section B.3) allocable (see section B.4) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other than an educational institution, hospital or State and local governmental unit this document would apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply.

3. Selected items of cost are treated in Section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in Section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. GENERAL STANDARDS FOR SELECTED ITEMS OF COST

Sections G-1 through G-46 provide standards to be applied in establishing the allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government. Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Materiel, services, and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.* (a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazine, newspapers, radio, and television programs, direct mail, trade papers, outdoor advertising, dealer cards, and window displays, conventions, exhibits, free goods, and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in section G.36; (2) the procurement of scarce items for the performance of the grant/contract or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B-3, B-4, and section D are observed.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.* Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in sections G-16 and G-30.

4. *Bonding costs.* (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.* (a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under paragraph (a) above are allowable through depreciation or use charges in accordance with G-10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services*—(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this section, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* (1) When the institution is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.* In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to share holders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(f) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment, (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if its results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g) (1) In addition to the general requirements set forth in paragraphs (a) through (f) of this section, certain forms of compensation are subject to further requirements as specified in paragraphs (2) through (9) below.

(2) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25 as it relates to compensation for overtime.

(3) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution to consistently as to imply, in effect, an agreement to make such payment. Awards, and incentive compensation when deferred are allowable to the extent provided in paragraph (4) below.

(4) *Deferred compensation.* (a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payments; (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of ten years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within paragraph (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.* Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) *Severance pay.* See section G.40.

(7) *Training and education expenses.* See section G.44.

(8) *Location allowances.* (a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its

principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed.

(9) *Support of salaries and wages.* (a) Direct charges for professionals must be supported by either:

(i) An adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) A monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the *total* salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the grant/contract.

8. *Contingencies.* (a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave, and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, sections G-17, G-21, and G-40).

9. *Contributions and donations.* (a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in sections C.1 and C.2 shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.* (a) Institutions may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by paragraph (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal Income Tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (i) above;

(iii) The sum-of-the-years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (ii) above.

(v) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(vi) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See section G. 13.)

(vii) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated. *Provided, however,* that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(viii) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(ix) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs, and credits.* (a) Employee morale, health, and welfare activities are those services or benefits provided by the institution to its

employees to improve working conditions, employer-employee relations, employee morale, and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by paragraph (c) below, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under paragraph (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (i) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see paragraph (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under paragraph (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see sections G-11 and G-43).

13. *Excess facility costs.* (a) As used in this paragraph, the words and phrases defined in this paragraph (a) shall have the meanings set forth below.

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment indivdually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materiels, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of idle facilities or idle capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, grantee/contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in paragraph (ii) of this paragraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see section G.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.* (See section G.6-(g)-(5.)

16. *Independent research and development.* (a) An institution's independent research and development (I.R. & D.) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/ contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materiels, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in paragraph (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I.R. & D. shall be allocated in proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I.R. & D. including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.* (a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. (See section G-6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in paragraph (a)(3) above.

18. *Interest and other financial costs.* (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in paragraphs (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D. (See also section C-2.)

19. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.* Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.* (a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see section G-10):

(1) Normal maintenance and repair costs are allowable:

(2) Extraordinary maintenance and repair costs are allowable provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materiels costs.* (a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materiels necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions paragraphs (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of materiel shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and materiel returned to vendors. Such income and other credits shall either be credited directly to the cost of the materiel involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materiels are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If materiel is issued from stores, any generally recognized method of pricing such materiel is acceptable if that method is consistently applied and the results are equitable. When estimates of materiel costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materiels, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materiels, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public;" or

(2) It is the result of "adequate price competition" and is the price at which an award

was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity.

Provided, that in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the institution under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with paragraph (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.* Expenditures, such as incorporation fees, attorney's fees, accountant's fees, broker's fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.* Included in this item are such recurring expenses as preparation and publication of reports to members and trustees; preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of director and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multishift premiums.* Premiums for overtime, extra-pay shifts and multishift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.* Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable. (See section G-39.)

27. *Pension plans.* (See section G 6(g)-(4).)

28. *Plant protection costs.* Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.* Plant reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are in-

curred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service cost—legal, accounting, scientific and other.* (a) Costs of professional services rendered by members of a particular profession who are not employees of the institution are allowable, subject to paragraphs (b), (c) and (d) below, when reasonable in relation to the services rendered. (But see section G-23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment grants/contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of anti-trust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.* Public information services costs include the costs associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems;

(b) Interest individuals or groups in participating in a service program of the institution;

(c) Provide stewardship reports to State and local Government agencies, benefactor foundations and associations, etc.;

(d) Appeal for funds;

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund-raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, press work, binding and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when written approval has been given in advance by the awarding agency.

36. *Recruitment costs.* (a) Subject to paragraphs (b), (c), and (d) of this section G-36, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising materiel for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.* (a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to paragraph (c) below, relocation costs of the type covered in paragraphs (a) (i), (ii), (iii), and (iv) above are allowable, provided (i) the move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of section G-36 or any other paragraph of this document and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under paragraph (b) above are subject to the following additional provisions: (i) the transition period for incurrence of costs of the type covered in paragraph (a)(ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in paragraph (a)(iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in paragraphs (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in paragraphs (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).* (a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: Provided, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in section G-42(e).

39. *Royalties and other costs for use of patents and copyrights.* (a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.* (a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the institution's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.* (a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract;

(2) Taxes in connection with financing, refinancing, or refunding operations (see section G-18);

(3) Taxes from which exemptions are available to the institution directly or available to the institution based on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of paragraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes. Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.* Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.* The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and materiel, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamiliarity or lack of experience with the product, materiels, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment were acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project; and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) *Subcontractor claims.* Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, Business, Technical, and Professional Activity Costs*—(a) *Membership.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences.* This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.* (a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related to an institution's goals are unallowable.

(b) Costs of on-the-job training and part-time education, at an undergraduate or post-graduate college level, related to the job requirements of bona fide employees, identified in paragraphs (1) through (5) below, are allowable.

(1) Training materiels;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materiels and textbooks (but not subsistence, salary, or any other emoluments) in connection with full time scientific and medical education at a post-graduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see section G-22).

Where identification with the materiels received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract, shall be treated as a direct cost.

46. *Travel costs.* (a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle of direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

PART 75—DIRECT GRANT PROGRAMS

Subpart A—General

REGULATIONS THAT APPLY TO DIRECT GRANT PROGRAMS

Sec.
75.1 Programs to which Part 75 applies.
75.2 Exceptions in program regulations to Part 75.
75.3 ED general grant regulations apply to these programs.
75.4 Department contracts.

ELIGIBILITY FOR A GRANT

75.50 How to find out whether you are eligible.
75.51 How to prove nonprofit status.

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

THE APPLICATION NOTICE

Sec.
75.100 Publication of an application notice; content of the notice.
75.101 Information in the application notice that helps an applicant apply.
75.102 Deadline date for applications.
75.103 Deadline date for preapplications.
75.104 Applicants must meet procedural rules.
75.105 Annual priorities.

APPLICATION CONTENTS

75.107 Applications for new grants under a discretionary grant program.
75.108 Applications for new grants under a formula grant program.
75.109 Changes to application; number of copies.
75.110 Assure compliance with appropriate requirements of law.
75.111 Describe the project.
75.112 Include a proposed project period and a timeline.
75.113 Describe the key personnel.
75.114 Describe the resources.
75.115 Describe the evaluation plan.
75.116 Demonstrate capability; include evaluation of completed project.
75.117 Information needed for a multi-year project.
75.118 Application for a continuation award.
75.119 Information needed if private school students participate.

JOINT FUNDING SIMPLIFICATION PROCEDURES

75.124 Applications and preapplications under the Joint Funding Simplification Act.

SEPARATE APPLICATIONS—ALTERNATIVE PROGRAMS

75.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.
75.126 Application must list all programs to which it is submitted.

GROUP APPLICATIONS

75.127 Eligible parties may apply as a group.
75.128 Who acts as applicant; the group agreement.
75.129 Legal responsibilities of each member of the group.

PREAPPLICATIONS

75.130 Preapplications; purpose of §§ 75.131-75.134.

Sec.
75.131 Consideration of a preapplication.
75.132 The effect of not submitting a preapplication.
75.133 Result of a preapplication.
75.134 The basis for the preapplication decision.

OPEN MEETING CERTIFICATION UNDER CERTAIN ESEA PROGRAMS

75.138 Open meetings; purpose of §§ 75.139-75.141.
75.139 The local educational agency shall hold an open meeting.
75.140 Give notice of the open meeting; make information available.
75.141 Certify that open meeting was held.

STATE APPROVAL PROCEDURES

75.150 Review procedure if State must approve applications; purpose of §§ 75.151-75.153.
75.151 When an applicant under § 75.150 must submit its application to the State; proof of submission.
75.152 The State reviews each application.
75.153 Deadlines for State approval.
75.154 Effect of State approval; failure to approve.

STATE COMMENT PROCEDURES

75.155 Review procedure if State may comment on applications: Purpose of §§ 75.156-75.158.
75.156 When an applicant under § 75.155 must submit its application to the State; proof of submission.
75.157 The State reviews each application.
75.158 Deadlines for State comments.
75.159 Effect of State comments or failure to comment.
75.160 Procedures for State approval of or comment on preapplications.

OMB CIRCULAR A-95 CLEARINGHOUSE PROCEDURES

75.170 Clearinghouse procedures: Purpose of §§ 75.170-75.173.
75.171 Notify the appropriate clearinghouses.
75.172 Applicant shall show compliance with A-95 procedures.
75.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A-95.

DEVELOPMENT OF CURRICULA OR INSTRUCTIONAL MATERIALS

75.190 Consultation.
75.191 Consultation costs.
75.192 Dissemination.

Subpart D—How Grants Are Made

SELECTION OF NEW PROJECTS

Sec.
75.200 How applications for new grants are selected for funding.
75.201 How to use the selection criteria.
75.202 Selection criterion—plan of operation.
75.203 Selection criterion—quality of key personnel.
75.204 Selection criterion—budget and cost effectiveness.
75.205 Selection criterion—evaluation plan.
75.206 Selection criterion—adequacy of resources.
75.210 Selection criteria for a discretionary grant program that does not have regulations.

SELECTION PROCEDURES

75.215 How the Department selects a new project: purpose of §§ 75.216-75.222.
75.216 Returning an application to the applicant.
75.217 How the Department selects applications for new grants.
75.218 Applications not selected for funding.
75.219 Exceptions to the procedures under § 75.217.
75.220 Procedures the Department uses under § 75.219(a).
75.221 Procedures the Department uses under § 75.219(b).
75.222 Procedures the Department uses under § 75.219(c).

PROCEDURES TO MAKE A GRANT

75.230 How the Department makes a grant; purpose of §§ 75.231-75.236.
75.231 Additional information.
75.232 The cost analysis; basis for grant amount.
75.233 Setting the amount of the grant.
75.234 The conditions of the grant.
75.235 The notification of grant award.
75.236 Effect of the grant.

APPROVAL OF MULTI-YEAR PROJECTS

75.250 Project period can be up to 60 months.
75.251 The budget period.
75.253 Continuation of a multi-year project after the first budget period.
75.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

MISCELLANEOUS

75.260 Allotments and reallotments.
75.261 Extension of a project period.

Subpart E—What Conditions Must Be Met by a Grantee?

NONDISCRIMINATION

Sec.

75.500 Federal statutes and regulations on nondiscrimination.

PROJECT STAFF

75.510 Use of a project director.
75.511 Waiver of requirement for a full-time project director.
75.515 Use of consultants.
75.516 Compensation of consultants—employees of institutions of higher education.
75.517 Changes in key staff members.
75.518 Minimum wage rates.
75.519 Dual compensation of staff.

CONFLICT OF INTEREST

75.524 Conflict of interest: Purpose of § 75.525.
75.525 Conflict of interest: Participation in a project.

ALLOWABLE COSTS

75.530 General cost principles.
75.531 Limit on total cost of a project.
75.532 Use of funds for religion prohibited.
75.533 Acquisition of real property; construction.
75.534 Training grants—automatic increases for additional dependents.

INDIRECT COST RATES

75.560 General indirect cost rates; exceptions.
75.561 Approval of indirect cost rates.
75.562 Indirect cost rates for educational training projects.
75.563 Restricted indirect cost rate—programs covered.
75.564 Restricted indirect cost rate—formula.
75.565 Administrative charge.
75.566 Fixed charges.
75.567 Other expenditures.
75.568 Using the restricted indirect cost rate.

COORDINATION

75.580 Coordination with other activities.
75.581 Methods of coordination.

EVALUATION

75.590 Evaluation by the grantee.
75.591 Federal evaluation—cooperation by a grantee.
75.592 Federal evaluation—satisfying requirement for grantee evaluation.

CONSTRUCTION

Sec.

75.600 Use of a grant for construction: purpose of §§ 75.601-75.615.
75.601 Applicant's assessment of environmental impact.
75.602 Preservation of historic sites must be described in the application.
75.603 Grantee's title to site.
75.604 Availability of cost-sharing funds.
75.605 Beginning the construction.
75.606 Completing the construction.
75.607 General considerations in designing facilities and carrying out construction.
75.608 Areas in the facilities for cultural activities.
75.609 Comply with safety and health standards.
75.610 Access by the handicapped.
75.611 Avoidance of flood hazards.
75.612 Supervision and inspection by the grantee.
75.613 Relocation assistance by the grantee.
75.614 Grantee must have operational funds.
75.615 Operation and maintenance by the grantee.
75.616 Energy conservation.

EQUIPMENT AND SUPPLIES

75.618 Charges for use of equipment or supplies.

PUBLICATIONS AND COPYRIGHTS

75.620 General conditions on publication.
75.621 Copyright policy for grantees and contractors.
75.622 Definition of "project materials."

INVENTIONS AND PATENTS

75.625 Invention and patent policy.
75.626 Show Federal support; give papers to vest title.

OTHER REQUIREMENTS FOR CERTAIN PROJECTS

75.650 Participation of students enrolled in private schools.
75.681 Protection of human research subjects.
75.682 Treatment of animals.
75.683 Health or safety standards for facilities.
75.684 Day care services.
75.690 Energy conservation awareness.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

75.700 Compliance with statutes, regulations, and applications.
75.701 The grantee administers or supervises the project.

Sec.
75.702 Fiscal control and fund accounting procedures.
75.703 Obligation of funds during the grant period.
75.707 When obligations are made.
75.708 Prohibition of subgrants.

REPORTS

75.720 Financial and performance reports.
75.721 Reports under the Joint Funding Simplification Act.

RECORDS

75.730 Records related to grant funds.
75.731 Records related to compliance.
75.732 Records related to performance.
75.733 Records related to State approval applications.
75.734 Record retention period.

PRIVACY

75.740 Protection of and access to student records.
75.741 Protection of students' privacy in research and testing.

DATA COLLECTION BY A GRANTEE

75.750 Approval of data collection instruments.
75.751 Procedures if approval is required.
75.752 Responsibility for data collection.
75.753 Confidentiality of response.
75.754 Exemption from coverage.
75.755 Definitions used in §§ 75.750-75.754.

Subpart G—What Procedures Does the Department Use To Get Compliance?

75.900 Waiver of regulations prohibited.
75.901 Suspension and termination.
75.902 [Reserved]
75.903 Effective date of termination.

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Subpart A—General

REGULATIONS THAT APPLY TO DIRECT GRANT PROGRAMS

§ 75.1 Programs to which Part 75 applies.

(a) The regulations in Part 75 apply to each program of the Education Department that is listed in the table following this section or whose regulations specifically state that Part 75 applies. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

NOTE: Some programs are not currently funded. Check the application notices published each year. See § 75.100.

(b) If a direct grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "direct grant program" includes any grant program of the Department other than a program whose authorizing statute provides a formula for allocating program funds among eligible States.

NOTE: See Part 76 for the general regulations that apply to programs that allocate funds among eligible States. See § 75.101(c) for a description of the information in the application notice for a discretionary grant program that does not have regulations. For a description of the two kinds of direct grant programs see § 75.200(b) for a description of a discretionary grant program and § 75.200(c) for a description of a formula grant program. Also see § 75.210 for the selection criteria for discretionary grant programs that do not have regulations.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
I. Office of the Secretary			
Fund for the Improvement of Postsecondary Education.	Section 404 of the General Education Provisions Act (20 U.S.C. 1221d).	Part 730	84.118.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
Capacity Building for Statistical Activities in State Educational Agencies.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Part 726	84.114.
II. National Institute of Education			
Programs of the National Institute of Education.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 700, 701, 702, 703, 706, 708, 710, 714, 716, 718, and 720.	84.117.
III. Institute of Museum Services			
Museum Services Program	Section 206 of the Museum Services Act (20 U.S.C. 965).	Part 64	84.07.
IV. Department *A. General Programs*			
Program Planning and Evaluation	Section 416 of the General Education Provisions Act (20 U.S.C. 1226b).	None	None.
National Diffusion Network	Sections 303 and 376 of the Elementary and Secondary Education Act (20 U.S.C. 2943 and 3041).	Part 796	84.073.
B. Elementary and Secondary Education Programs			
School Construction in Areas Affected by Federal Activities.	Public Law 81-815, except section 16 (20 U.S.C. 631-645, 647).	Part 216	84.040.
Entitlements for Handicapped Children	Section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238).	Part 222, Subpart H.	84.041.
School Expenditures and Construction in Cases of Certain Disasters.	Sections 7 and 16 of Public Law 81-815 (20 U.S.C. 241-1 and 646).	Part 219	84.040 and 84.041.
Coordination of Migrant Education	Section 143 of the Elementary and Secondary Education Act (20 U.S.C. 2763).	None	None.
Transition of Neglected or Delinquent Children.	Section 153 of the Elementary and Secondary Education Act (20 U.S.C. 2783).	None	84.013.
Basic Skills Improvement—National Program.	Title II-A of the Elementary and Secondary Education Act (20 U.S.C. 2881-2890).	Part 765	84.105.
Special Projects for Improving Basic Skills	Title II-C of the Elementary and Secondary Education Act (20 U.S.C. 2911-2912).	Part 765	84.105.
Special Projects	Title III-A of the Elementary and Secondary Education Act (20 U.S.C. 2941-2943).	None	None.
Metric Education	Title III-B of the Elementary and Secondary Education Act (20 U.S.C. 2951-2954).	Part 752	84.079.
Arts Education	Title III-C of the Elementary and Secondary Education Act (20 U.S.C. 2961-2963).	Part 753	84.084.
Preschool Partnership	Title III-D of the Elementary and Secondary Education Act (20 U.S.C. 2971).	Part 161d	None.
Consumers' Education	Title III-E of the Elementary and Secondary Education Act (20 U.S.C. 2981-2986).	Part 755	84.082.
Youth Employment	Title III-F of the Elementary and Secondary Education Act (20 U.S.C. 2991-2992).	Part 419	None.
Law-Related Education	Title III-G of the Elementary and Secondary Education Act (20 U.S.C. 3001-3003).	Part 757	84.123.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011-3018).	Part 758	None.
Health Education	Title III-I of the Elementary and Secondary Education Act (20 U.S.C. 3021-3024).	Part 161i	None.
Correction Education	Title III-J of the Elementary and Secondary Education Act (20 U.S.C. 3031-3034).	Part 61	None.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
B. Elementary and Secondary Education Programs—Continued			
Dissemination of Information	Title III-K of the Elementary and Secondary Education Act (20 U.S.C. 3041).	None	None.
Biomedical Sciences	Title III-L of the Elementary and Secondary Education Act (20 U.S.C. 3051-3057).	Part 647	84.112.
Population Education	Title III-M of the Elementary and Secondary Education Act (20 U.S.C. 3061-3062).	Part 763	None.
Federal Financial Assistance for Strengthening State Departments of Education—Special Project Grants.	Section 505 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978).	None.
Comprehensive Educational Planning and Evaluation.	Sections 531-534 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978).	None.
Bilingual Education	Title VII of the Elementary and Secondary Education Act (20 U.S.C. 3221-3261).	Parts 500, 501, and 502.	84.003.
Financial Assistance for Demonstration Projects for Reducing School Dropouts.	Section 807 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978).	None.
Grants for Demonstration Projects to Improve School Health and Nutrition Services for Children from Low-Income Families.	Section 808 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978).	None.
Community Schools and Comprehensive Community Education.	Sections 809-813 of the Elementary and Secondary Education Act (20 U.S.C. 3289-3293).	Part 443, Subparts C, D, and E.	84.081.
Gifted and Talented Children	Section 905 of the Elementary and Secondary Education Act (20 U.S.C. 3315).	Part 345	84.080.
Educational Proficiency Standards	Title IX-B of the Elementary and Secondary Education Act (20 U.S.C. 3331-3332).	None	None.
Women's Educational Equity	Title IX-C of the Elementary and Secondary Education Act (20 U.S.C. 3341-3348).	Part 745	84.083.
Safe Schools	Title IX-D of the Elementary and Secondary Education Act (20 U.S.C. 3351-3354).	Part 758	None.
Ethnic Heritage Studies Program	Title IX-E of the Elementary and Secondary Education Act (20 U.S.C. 3361-3367).	Part 769	84.070.
Follow Through Program	Sections 551-556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929-2929c).	Part 215	84.014.
Guidance and Counseling	Title III-D of the Education Amendments of 1976 (20 U.S.C. 2531-2534).	Part 211	84.092
C. Education of the Handicapped Programs			
Regional Resource Centers	Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Part 305	84.028.
Centers and Services for Deaf-Blind Children.	Section 622 of the Education of the Handicapped Act (20 U.S.C. 1422).	Part 307	84.025.
Early Education for Handicapped Children	Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423).	Part 309	84.024.
Severely Handicapped Children	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 315	84.086.
Auxiliary Activities	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 315	None.
Training Personnel for the Education of the Handicapped.	Sections 631, 632, and 634 of the Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434).	Part 318	84.029.
Recruitment of Personnel and Dissemination of Information.	Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).	Part 320	84.028.
Research in the Education of the Handicapped.	Part E of the Education of the Handicapped Act (20 U.S.C. 1441-1444).	Part 324	84.023.
Instructional Media for the Handicapped	Part F of the Education of the Handicapped Act (20 U.S.C. 1451-1454).	Part 320	84.026.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
C. Education of the Handicapped Programs			
Regional Education Programs for Handicapped Persons.	Section 625 of the Education of the Handicapped Act (20 U.S.C. 1424a).	Part 338	84.078.
Removal of Architectural Barriers to the Handicapped.	Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406).	None	None.
D. Occupational and Adult Education Programs			
Commissioner's Discretionary Programs of Vocational Education.	Title I-B and Section 103(a)(1)(B) of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 408	84.051, 84.101.
Career Education—Model Programs	Section 10 of the Career Education Incentive Act (20 U.S.C. 2609).	Part 296	None.
Postsecondary Career Education Demonstration Program.	Section 11 of the Career Education Incentive Act (20 U.S.C. 2610).	Part 296	None.
Career Education Information Program	Section 12 of the Career Education Incentive Act (20 U.S.C. 2611).	Part 296	None.
Adult Education Programs	Sections 309, 317, and 318 of the Adult Education Act (20 U.S.C. 1207a, 1211b, and 1211c).	Part 425	None.
E. Higher Education Programs			
College Library Resources Program	Title II-A of the Higher Education Act (20 U.S.C. 1021-1028).	Part 773	84.005.
Grants for Training in Librarianship	Section 222 of the Higher Education Act (20 U.S.C. 1031-1033).	Part 776	84.036.
Library Resources Demonstration	Section 223 of the Higher Education Act (20 U.S.C. 1034).	Part 777	84.039.
Strengthening Research Library Resources	Title II-C of the Higher Education Act (20 U.S.C. 1041-1046).	Part 778	84.091.
Modern Foreign Language and Area Studies (except Foreign Language and Area Studies Fellowships).	Title VI of the National Defense Education Act (except sections 511(b) and 603) (20 U.S.C. 511-513).	Part 655 (except Subpart D).	84.017.
Higher Education Programs in Modern Foreign Language Training and Area Studies.	Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2452(b)(6)).	Part 662	84.019, 84.020, 84.021, and 84.022.
Citizen Education for Cultural Understanding Program.	Section 603 of the National Defense Education Act (20 U.S.C. 512a).	Part 667	None.
Educational Opportunity Centers	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 644	84.066.
Upward Bound Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 645	84.047.
Special Services for Disadvantaged Students.	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 646	84.112.
Talent Search Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 643	84.044.
Strengthening Developing Institutions Program.	Title III of the Higher Education Act (20 U.S.C. 1051-1056).	Part 624	84.031.
Training for Higher Education Personnel	Section 533 of the Higher Education Act (20 U.S.C. 1119a-1).	Part 241	84.103.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities.).	Parts A, B, and E, of Title VII of the Higher Education Act (20 U.S.C. 1132a-1132b-1 and 1132d-11).	Part 617	None.
Instructional Equipment Grants for Institutions of Higher Education.	Title VI of the Higher Education Act (20 U.S.C. 1121-1129a).	See 43 FR 57254 (December 7, 1978).	None.
Financial Assistance for Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of the Higher Education Act (20 U.S.C. 1005a).	Part 610, Subpart C.	84.046.
Cooperative Education Programs	Title VIII of the Higher Education Act (20 U.S.C. 1133-1133b).	Part 631	84.055.
Veteran's Cost-of-Instruction Payments to Institutions of Higher Education.	Section 420 of the Higher Education Act (20 U.S.C. 1070e-1).	Part 629	84.064.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
E. Higher Education Programs			
Public Service Education Program—Public Service Institutional Grants.	Sections 901-904 of the Higher Education Act (20 U.S.C. 1134-1134c).	Part 649, Subpart A.	84.075.
Graduate and Professional Study Institutional Grants.	Sections 901-904 of the Higher Education Act (20 U.S.C. 1134-1134b).	Part 646 (except Subpart C).	84.094.
State Postsecondary Education Commissions Program—Inter-state Planning.	Section 1203(c) of the Higher Education Act (20 U.S.C. 1142b(c)).	Part 605	84.071.
Community Colleges	Title X of the Higher Education Act (20 U.S.C. 1135 through 1135c-1).	None	None.
F. Other Programs			
Alcohol and Drug Abuse Education Program.	Public Law 93-422 (20 U.S.C. 1001-1007)	Part 740	84.008.
Television Program Assistance	Section 1527 of the Education Amendments of 1978 (20 U.S.C. 1221j).	None	None.
Teacher Corps Program	Section V-A of the Higher Education Act (20 U.S.C. 1101-1107a).	Part 793	84.045.
Teacher Centers Program	Section 532 of the Higher Education Act (20 U.S.C. 1119a).	Part 240	84.006.
Territorial Teacher Training	Section 1525 of the Education Amendments of 1978.	None	None.
Education Information Management System.	Section 400A (f) and (g) of the General Education Provisions Act (20 U.S.C. 1221-3 (f) and (g)).	None	None.
Indian Education Act (Part A)	Title IV-A of Public Law 92-318 (20 U.S.C. 241aa-241ff).	Parts 250 and 251.	84.060 and 84.061.
Indian Education Act (Part B) (except the Indian Fellowship Program).	Title IV-B of Public Law 92-318 (20 U.S.C. 887c-1, 3385).	Parts 250 and 252.	84.061.
Indian Education Act (Part C)	Title IV-C of Public Law 92-318 (20 U.S.C. 1211a).	Parts 250 and 253.	84.062.
Desegregation of Public Education	Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c through 2000c-5).	Part 270	84.004.
Emergency School Aid	Title VI of the Elementary and Secondary Education Act (20 U.S.C. 3191-3207).	Part 280	84.143, 84.057, 84.106, 84.107, and 84.110.
Racially Isolated School Districts	Section 1522 of the Education Amendments of 1978.	None	None.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980, as amended at 45 FR 28669, Apr. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980]

§ 75.2 Exceptions in program regulations to Part 75.

If a program has regulations that are not consistent with Part 75, the implementing regulations for that program identify the sections of Part 75 that do not apply.

(20 U.S.C. 1221e-3(a)(1))

§ 75.3 ED general grant regulations apply to these programs.

The ED general grant regulations in 34 CFR Part 74 of this title apply to the programs covered by this part. To find subjects covered under 34 CFR Part 74, look in the table of contents at the beginning of 34 CFR Part 74.

(20 U.S.C. 1221e-3(a)(1))

§ 75.4 Department contracts.

(a) A contract of the Department is governed by:

(1) Chapters 1 and 3 of Title 41 of the Code of Federal Regulations;

(2) Any applicable program regulations; and

(3) The request for proposals for the procurement, if any, referenced in *Commerce Business Daily*.

(b) The regulations in Part 75 do not apply to a contract of the Department unless regulations in Part 75 or a program's regulations specifically provide otherwise.

(20 U.S.C. 1221e-3(a)(1))

ELIGIBILITY FOR A GRANT

§ 75.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Department is governed by the authorizing statute and implementing regulations for that program. The table in § 75.1 references the statutes and regulations that apply to direct grant programs of the Department.

(20 U.S.C. 1221e-3(a)(1))

§ 75.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of "nonprofit" in 34 CFR 77.1.)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under Section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that—

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b) (1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(20 U.S.C. 1221e-3(a)(1))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

THE APPLICATION NOTICE

§ 75.100 Publication of an application notice; content of the notice.

(a) Each fiscal year the Secretary publishes application notices in the FEDERAL REGISTER that explain what kind of assistance is available under the programs that he or she administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a new grant.

(2) How to apply for a continuation award for an existing project already being funded under that program.

(3) If preapplications are used under the program, how to preapply for a new grant.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

§ 75.101 Information in the application notice that helps an applicant apply.

(a) The application notice for each program gives important information that can help an applicant. The information usually includes—

(1) How an applicant can get an information package that contains detailed information about the program and the application form that the applicant must use;

(2) Where in the Department an applicant must send its application;

(3) The amount of funds available for new grants;

(4) The number of new grants the Department expects to make under the program;

(5) The expected budget period, and the average amount of funding that the Department will provide to a new grant under the program;

(6) If the program plans to approve multi-year projects, the project period that the Department will approve under the program;

(7) The amount of funds available for continuation awards under the program;

(8) The number of continuation awards the Department expects to make under the program;

(9) The average amount of funding that the Department expects to provide in these continuation awards;

(10) Any priorities established by the Secretary for the program for that year and the method the Secretary will use to implement the priorities (Cross-reference: See § 75.105 Annual priorities); and

(11) A reference to the regulations that apply to the program.

(b) If the Secretary either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

(c) If a discretionary grant program does not have implementing regulations, the application notice describes—

(1) The purposes of the statute that authorizes the program;

(2) The needs recognized in the authorizing statute;

(3) Other interpretations of the statute adopted by the Secretary that significantly affect the administration of the program;

(4) Inconsistencies, if any, between the authorizing statute and the General Education Provisions Act or the regulations in this part;

(5) How the criteria in § 75.210 of EDGAR apply to an application; and

(6) How the Secretary will distribute the points reserved under § 74.210(c).

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980; 46 FR 3205, Jan. 14, 1981]

CROSS-REFERENCE. See 34 CFR 77.1—definitions of "budget period" and "project period."

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for applications to be mailed or hand delivered to the Department.

(b) If an applicant wants a new grant, the applicant shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(c) If an applicant wants a continuation award, the applicant, to be assured of consideration, shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(d) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(e) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(20 U.S.C. 1221e-3(a)(1))

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

§ 75.103 Deadline date for preapplications.

(a) If the Secretary invites or requires preapplications under a program, the application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 75.102(b) and (d).

(20 U.S.C. 1221e-3(a)(1))

§ 75.104 Applicants must meet procedural rules.

The Secretary may make a grant only to an eligible party that submits an application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.105 Annual priorities.

(a) *What programs are covered by this section?* This section applies to any program for which the Secretary establishes priorities for selection of applications in a particular fiscal year.

(b) *How does the Secretary establish annual priorities?*

(1) The Secretary establishes final annual priorities by publishing the priorities in a notice in the FEDERAL REGISTER, usually in the application notice for that program.

(2) The Secretary publishes proposed annual priorities for public comment, unless—

(i) The final annual priorities will be implemented only by inviting applications that meet the priorities (Cross-reference: See 34 CFR 75.105(c)(1));

(ii) The final annual priorities are chosen from a list of priorities already established in the program's regulations; or

(iii) Publishing proposed annual priorities would seriously interfere with an orderly, responsible grant award process or would otherwise be impracticable, unnecessary, or contrary to the public interest.

(c) *How does the Secretary implement an annual priority?*

The Secretary may choose one or more of the following methods to implement an annual priority:

(1) *Invitations.* The Secretary may simply invite applications that meet a priority. If the Secetary chooses this method, an application that meets the priority receives no competitive or absolute preference over applications that do not meet the priority.

(2) *Competitive preference.* The Secretary may give one of the following kinds of competitive preference to applications that meet a priority.

(i) If a program uses weighted selection criteria, the Secretary may award selection points to an application that meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The notice states the number of additional points that the Secretary will award to applications that meet the priority in a particularly effective way.

(ii) The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority for a program. The Secretary establishes an absolute preference by reserving all or part of a program's funds solely for applications that meet the priority. The Secretary may establish the amount reserved for applications that meet the priority either—

(i) In the application notice; or

(ii) After determining the number of high quality applications received.

(20 U.S.C. 3474)

[46 FR 3205, Jan. 14, 1981]

APPLICATION CONTENTS

CROSS-REFERENCE. See § 75.200 for a description of discretionary and formula grant programs.

§ 75.107 Applications for new grants under a discretionary grant program.

In an application for a new grant under a discretionary grant program, the applicant shall include—

(a) Information that addresses each selection criterion that applies to the program;

(b) The information required by the following sections of EDGAR—

(1) Section 75.110;

(2) Section 75.112;

(3) Section 75.116;

(4) Section 75.117;

(5) The regulations noted after § 75.118, if appropriate; and

(6) Section 75.119, if appropriate; and

(c) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart N—Forms for Applying for Grants.

§ 75.108 Applications for new grants under a formula grant program.

In an application for a new grant under a formula grant program, the applicant shall include—

(a) The information required by the following sections of EDGAR—

(1) Sections 75.110-75.117;

(2) The regulations noted after § 75.118 if appropriate; and

(3) Section 75.119, if appropriate; and

(b) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.109 Changes to application; number of copies.

(a) Each applicant shall submit an original and two copies of its application to the Department, including any information that the applicant supplies voluntarily.

(b) An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference. See § 75.200 How applications for new grants are selected for funding.

§ 75.110 Assure compliance with appropriate requirements of law.

An application must include an assurance that a grantee will comply with the requirements imposed by the Secretary concerning—

(a) Special requirements of law;

(b) Program requirements; and

(c) Administrative requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 75.111 Describe the project.

An application must describe the project in detail. The description must include—

(a) The purpose of the project;

(b) The design of the project and the plan of management for the project;

(c) Each objective of the project and how the applicant plans to use its resources and personnel to achieve each objective;

(d) The characteristics of intended project participants and beneficiaries, including the extent to which intended partic[illegible] and beneficiaries are persons [illegible] are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly; and

(e) The expected effects of the project on persons who are members of groups that have been traditionally underrepresented.

(20 U.S.C. 1221e-3(a)(1))

§ 75.112 Include a proposed project period and a timeline.

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(20 U.S.C. 1221e-3(a)(1))

§ 75.113 Describe the key personnel.

An application must include the name and qualifications of each key person in the proposed project. The following information must be included:

(a) The name and qualifications of the project director (if one is to be used.)

(b) The name and qualifications of each of any other key personnel in the project.

(c) The time that each person referred to in paragraphs (a) and (b) of this section plans to commit to the proposed project.

(d) If the name of the project director or any other key person is not known to the applicant when it submits the application, the application must specify the minimum qualifications for that person. This paragraph does not allow an applicant to omit the name or qualifications of the principal investigator for a proposed research project.

(20 U.S.C. 1221e-3(a)(1))

§ 75.114 Describe the resources.

An application must describe the resources the applicant plans to devote to the project, including—

(a) Facilities; and

(b) Equipment and supplies.

(20 U.S.C. 1221e-3(a)(1))

§ 75.115 Describe the evaluation plan.

An application must include a description of the applicant's plan to evaluate the project under § 75.590, the authorizing statute of the program, and the implementing regulations of the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.116 Demonstrate capability; include evaluation of completed project.

(a) An application must include information to demonstrate the applicant's capability to—

(1) Conduct the project; and

(2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

(b) If an applicant wants a grant for a new project that furthers the objectives of a project already completed by the applicant, the applicant shall include any existing evaluation of the completed project.

(20 U.S.C. 1221e-3(a)(1))

§ 75.117 Information needed for a multi-year project.

An applicant that proposes a multi-year project shall include in its application—

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(20 U.S.C. 1221e-3(a)(1))

§ 75.118 Application for a continuation award.

(a) An applicant shall comply with paragraph (b) of this section if—

(1) The applicant wants funds to continue a project already approved on a multi-year basis;

(2) The applicant is about to complete one or more of the budget periods; and

(3) The budget period for which the applicant wants a continuation award is within the approved project period.

(b) An applicant for a continuation award shall submit the following:

(1) A revised face page (standard form 424) and revisions to any other affected pages of the approved application.

(2) A budget that covers the next budget period, and an estimate of the amount of funds that will remain unobligated at the end of the current budget period.

(3) An estimate of the Federal funds needed for each budget period that comes after the next budget period.

(c) The Secretary may also require the applicant to submit a report of project accomplishments to date.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See § 75.117 Information needed for a multi-year project, and §§ 75.250-75.253 Approval of multi-year projects.

NOTE: Other sections in this part may require an applicant to put information in its application. However, these sections are not included here because they either—

(1) Apply only to a limited number of programs; or

(2) Apply only under specified circumstances.

A list of these sections follows:

§ 75.128 Who acts as applicant; the group agreement.
§ 75.141 Certify that open meeting was held.
§ 75.151 When an applicant under § 75.150 must submit its application to the State; proof of submission.
§ 75.156 When an applicant under § 75.155 must submit its application to the State; proof of submission.
§ 75.160 Procedures for State approval of or comment on preapplications.
§ 75.172 Applicant shall show compliance with A-95 procedures.
§ 75.192 Dissemination.
§ 75.601 Applicant's assessment of environmental impact.
§ 75.602 Preservation of historic sites must be described in the application.

§ 75.119 Information needed if private school students participate.

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(20 U.S.C. 1221e-3(a)(1))

JOINT FUNDING SIMPLIFICATION PROCEDURES

§ 75.124 Applications and preapplications under the Joint Funding Simplification Act.

(a) The Joint Funding Simplification Act permits a State or local government or nonprofit organization to seek Federal funds from more than one program in a single application. An applicant shall use the Joint Funding Simplification Act procedures specified in this section if the applicant wants a grant that is funded in part from one Department direct grant program and funded in part from—

(1) One or more other Department direct grant programs;

(2) One or more other Federal agencies; or

(3) One or more State agencies.

(b) An applicant for a grant under this Act shall comply with the requirements in OMB Circular A-111 and the supplemental procedures in this part. The OMB circular was published in the FEDERAL REGISTER on July 30, 1976 (41 FR 32040). An applicant may obtain a copy of this circular by addressing its request to: Joint Funding Information, Director, Division of Regulations Management, Room 2129, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(c) The supplemental procedures in this part are in—

(1) Section 75.125;
(2) Section 75.219(b);
(3) Section 75.221;
(4) Section 75.250(b);
(5) Section 75.254; and
(6) Section 75.721.

(d) An applicant for a grant under the Joint Funding Simplification Act does not have to comply with any deadline date for applications or preapplications under a Department program from which the applicant seeks funds. However, the Secretary does not reserve any program funds for jointly funded grants. For this reason, the Secretary encourages an applicant for a jointly funded grant to apply before the fiscal year in which the grant is to be made or at least before the deadline for applications under the program for that fiscal year.

(42 U.S.C. 4252(a))

SEPARATE APPLICATIONS—ALTERNATIVE PROGRAMS

§ 75.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.

(a) An applicant shall submit a separate application to each program under which it wants a grant.

(b) If an applicant wants a grant under the Joint Funding Simplification Act, the applicant shall submit a single application under the procedures in OMB Circular A-111.

(20 U.S.C. 1221e-3(a)(1); 42 U.S.C. 4252(a))

§ 75.126 Application must list all programs to which it is submitted.

If an applicant is submitting an application for the same project under more than one Federal program, the applicant shall list these programs in its application. The Secretary uses this information to avoid duplicate grants for the same project.

(20 U.S.C. 1221e-3(a)(1))

GROUP APPLICATIONS

§ 75.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the term used to refer to the group may vary. The list that follows contains some of the terms used to identify a group of eligible parties:

(1) Combination of institutions of higher education.
(2) Consortium.
(3) Joint applicants.
(4) Cooperative arrangements.

(20 U.S.C. 1221e-3(a)(1))

§ 75.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.129 Legal responsibilities of each member of the group.

(a) If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(b) Each member of the group is legally responsible to—

(1) Carry out the activities it agrees to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

PREAPPLICATIONS

§ 75.130 Preapplications; purpose of §§ 75.131-75.134.

The Secretary considers a preapplication under the procedures in §§ 75.131-75.134.

(20 U.S.C. 1221e-3(a)(1))

§ 75.131 Consideration of a preapplication.

The Secretary is required to consider a preapplication if—

(a) The applicant complies with the procedural rules that govern submission of the preapplication; and

(b) (1) The preapplication is submitted in response to an application notice that invites or requires preapplications; or

(2) The preapplication is submitted by a government, as defined in 34 CFR 74.3.

CROSS-REFERENCE. See Subpart N of 34 CFR Part 74.

(20 U.S.C. 1221e-3(a)(1))

§ 75.132 The effect of not submitting a preapplication.

(a) If the Secretary invites but does not require preapplications under a program, an applicant may apply for a grant under the program even if the applicant did not preapply.

(b) If the Secretary requires preapplications under a program and an applicant does not preapply, the applicant may not apply for a grant under the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.133 Result of a preapplication.

(a) If an applicant submits a preapplication under a program, the Secretary—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant under the program;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant under the program; or

(3) Informs the applicant that it is ineligible for assistance under the program, and explains why the applicant is ineligible.

(b) An applicant may apply under a program even if the Secretary does not encourage it to apply.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See § 75.216 Returning an application to an applicant.

§ 75.134 The basis for the preapplication decision.

To decide whether to encourage a preapplicant to apply, the Secretary uses the same criteria that the Secretary uses to select an applicant for a grant. (See §§ 75.200-75.206 for a description of how selection criteria work.)

(20 U.S.C. 1221e-3(a)(1))

OPEN MEETING CERTIFICATION UNDER CERTAIN ESEA PROGRAMS

§ 75.138 Open meetings; purpose of §§ 75.139-75.141.

(a) Sections 75.139-75.141 implement Section 1006 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

(b) Section 1006 requires a local educational agency that submits an application under certain ESEA programs to certify that it has held an open meeting regarding the contents of the application.

(c) Section 1006 applies to each ESEA program listed in § 75.1.

(20 U.S.C. 887e)

§ 75.139 The local educational agency shall hold an open meeting.

(a) If a local educational agency applies for a grant under an ESEA program listed in § 75.1, the agency shall hold at least one meeting open to the public.

(b) The agency shall inform the people who attend the meeting of—

(1) The ESEA program under which the agency wants a grant;

(2) The kinds of activities that are authorized under the statute and the program regulations; and

(3) The activities for which the agency wants the grant.

(c) The agency shall give each person who attends the meeting an opportunity to comment or make recommendations on the agency's proposed activities.

(20 U.S.C. 887e)

§ 75.140 Give notice of the open meeting; make information available.

(a) If a local educational agency must hold an open meeting under § 75.139, the agency shall give notice of the time, place, and purpose of the meeting.

(b) The agency shall give notice that—

(1) Is likely to reach the general public in the area served by the project; and

(2) Gives the public time to prepare for the meeting.

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the notice required by paragraph (b)(1) of this section, and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(d) If students enrolled in private schools may participate under the program, the agency shall take steps to ensure that appropriate representatives of those children receive notice of and are encouraged to participate in the meeting.

(e) The agency shall make the following material available for inspection by the public at least 24 hours before the open meeting begins:

(1) An outline of the information described in § 75.139(b).

(2) A draft copy of the agency's application, if the application has been prepared.

(20 U.S.C. 887e)

§ 75.141 Certify that open meeting was held.

If a local educational agency must hold an open meeting under § 75.139, the agency shall certify in its application that—

(a) The agency held at least one open meeting under § 75.139;

(b) The agency gave notice of each open meeting in accordance with § 75.140 (a) and (b);

(c) The agency made information available in accordance with § 75.140(c)-(e);

(d) The agency gave meaningful consideration to any comments or recommendations that it received at each open meeting; and

(e) The agency amended its application, as appropriate, in light of those comments and recommendations.

(20 U.S.C. 887e)

STATE APPROVAL PROCEDURES

§ 75.150 Review procedure if State must approve applications; purpose of §§ 75.151-75.153.

If the authorizing statute for a program requires the State to approve each application, the State and the applicant shall use the procedures in §§ 75.151-75.153.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See § 75.160 Procedures for State approval of or comment on preapplications; and § 75.733 Records related to State approval of applications.

§ 75.151 When an applicant under § 75.150 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 75.150 of this part shall submit a copy of its application to the State at least 15 days before the deadline date for submitting the application to the Department.

(b) The applicant shall attach to its application a copy of its letter that requests the State to approve the application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.152 The State reviews each application.

Each State that receives an application under § 75.151 of this part shall review the application to decide if the State wishes to approve or disapprove the application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.153 Deadlines for State approval.

(a) The Secretary may publish in the FEDERAL REGISTER a notice that establishes a deadline date for receipt of State approvals of applications under a program covered by § 75.150.

(b) If a State approves an application, the appropriate State official shall—

(1) Sign a statement that approves the application; and

(2) Submit the application and the statement by the deadline date for State approvals. The procedures in § 75.102(c) (how to meet a deadline date) apply to this submission.

(20 U.S.C. 1221e-3(a)(1))

§ 75.154 Effect of State approval; failure to approve.

(a) If a State approves an application on or before the deadline date for State approval, the Secretary may select that project for a grant.

(b) If a State does not approve an application on or before the deadline date for State approval, the Secretary does not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

STATE COMMENT PROCEDURES

§ 75.155 Review procedure if State may comment on applications: Purpose of §§ 75.156–75.158.

If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158.

(20 U.S.C. 1221e-3(a)(1))

§ 75.156 When an applicant under § 75.155 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.157 The State reviews each application.

A State that receives an application under § 75.156 may review and comment on the application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.158 Deadlines for State comments.

(a) The Secretary may establish a deadline date for receipt of State comments on applications.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

(c) The appropriate State official shall submit comments to the Secretary by the deadline date for State comments. The procedures in § 75.102 (b) and (d) (how to meet a deadline) of this part apply to this submission.

(20 U.S.C. 1221e-3(a)(1))

§ 75.159 Effect of State comments or failure to comment.

(a) The Secretary considers those comments of the State that relate to—

(1) Any selection criterion that applies under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State an opportunity to comment, the Secretary does not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 75.160 Procedures for State approval of or comment on preapplications.

(a) If the authorizing statute for a program requires that a State approve each preapplication, the State and the applicant shall use the approval procedures in §§ 75.151-75.153 for the preapplication.

(b) If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each preapplication, the State and the applicant shall use the comment procedures in §§ 75.156-75.158 for the preapplication.

(20 U.S.C. 1221e-3(a)(1))

OMB Circular A-95 Clearinghouse Procedures

§ 75.170 Clearinghouse procedures: purpose of §§ 75.170-75.173.

(a) Sections 75.170-75.173 implement Part I of OMB Circular A-95.

(b) Part I of OMB Circular A-95 requires an applicant under certain Federal programs to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply. The clearinghouses may comment on the application.

(c) The following programs listed in § 75.1 are covered by Part I of OMB Circular A-95:

Name of program	Authorizing statute	Implementing regulations	CFDA No.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011).	Part 758	None.
Follow Through Program	Sections 551-556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929-2929e).	Part 215	84.014.
Model Programs under the Research in the Education of the Handicapped Program.	Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441).	Part 324	84.023.
Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of Title I of the Higher Education Act of 1965 (20 U.S.C. 1005a).	Part 610, Subpart C.	84.046.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities.).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132a-1132b-1).	Part 617	None.

[45 FR 22497, Apr. 3, 1980, as amended at 45 FR 28669, Apr. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 75.171 Notify the appropriate clearinghouses.

(a) An applicant under a program listed in § 75.170 shall include in its notice to the clearinghouses a summary of the project.

(b) If a clearinghouse to which a notice is submitted has specified what information is to be included in a summary, the applicant shall provide that information.

(c) If a clearinghouse to which a notice is submitted has not specified what information is to be included in a summary, the applicant shall provide the following information:

(1) The identity of the applicant.

(2) The geographic location of the proposed project (including a map, if appropriate).

(3) A brief description of the proposed project that helps the clearinghouses identify any State and local agencies that have plans or projects that may be affected by the project. The description must include—

(i) The type of project;

(ii) The purpose of the project;

(iii) The general size of the project;

(iv) The estimated cost of the project;

(v) The beneficiaries of the project; and

(vi) Any other information that will help the clearinghouses identify affected agencies.

(4) A statement that shows whether the applicant must prepare an Environmental Impact Statement.

(5) The name of the program and the Catalog of Federal Domestic Assistance number for the program.

(6) The date the applicant expects to submit its application to the Department.

(d) If an applicant uses the preapplication procedure in this subpart, the applicant shall submit a copy of the preapplication to the appropriate clearinghouses on the same date it submits the preapplication to the Department.

(20 U.S.C. 1221e-3(a)(1))

§ 75.172 Applicant shall show compliance with A-95 procedures.

An applicant under a program listed in § 75.170 shall include either of the following in its application—

(a) (1) The comments of each clearinghouse that commented on the application; and

(2) A statement that the applicant considered those comments before submitting the application to the Department; or

(b) A statement that the applicant has used the procedures of Part I of OMB Circular A-95 but has not received any clearinghouse comments.

(20 U.S.C. 1221e-3(a)(1))

§ 75.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A-95.

(a) OMB Circular A-95 gives a clearinghouse 30 days to—

(1) Notify affected agencies and governments; and

(2) Consult with the applicant about the application.

(b) The Circular also permits a clearinghouse to take an additional 30 days to review the application and to transmit comments to the applicant.

(c) The Secretary may make a grant under a program listed in § 75.170 only if the applicant has complied with Part I of OMB Circular A-95.

(20 U.S.C. 1221e-3(a)(1))

DEVELOPMENT OF CURRICULA OR INSTRUCTIONAL MATERIALS

§ 75.190 Consultation.

Each applicant that intends to develop curricula or instructional materials under a grant is encouraged to assure that the curricula or materials will be developed in a manner conducive to dissemination, through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in dissemination.

(20 U.S.C. 1231c(c)(1))

§ 75.191 Consultation costs.

An applicant may budget reasonable consultation fees or planning costs in connection with the development of curricula or instructional materials.

(20 U.S.C. 1231c(c)(2))

§ 75.192 Dissemination.

If an applicant proposes to publish and disseminate curricula or instructional materials under a grant, the applicant shall include an assurance in its application that the curricula or materials will reach the populations for which the curricula or materials were developed.

(20 U.S.C. 1231c(c)(3))

Subpart D—How Grants Are Made

SELECTION OF NEW PROJECTS

§ 75.200 How applications for new grants are selected for funding.

(a) *Direct grant programs.* The Department administers two kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

CROSS-REFERENCE. See § 75.219 Exceptions to the procedures under § 75.217.

(2) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(3) Sections 75.202 through 75.206 contain the EDGAR selection criteria. The EDGAR criteria used by a program are repeated in the program regulations. If a program does not have selection criteria, the Secretary uses the EDGAR criteria, with each criterion weighted equally, to evaluate applications.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the program statute and regulations to fund projects under a formula grant program. The EDGAR selection criteria in §§ 75.202-75.206 are not used to evaluate applications under these programs.

(20 U.S.C. 1221e-3(a)(1))

§ 75.201 How to use the selection criteria.

(a) *Unweighted criteria.* If the selection criteria for a program are not weighted, the Secretary evaluates each criterion equally.

(b) *Weighted criteria.* (1) If the selection criteria for a program are weighted, the Secretary assigns in the program regulations a total number of points that an applicant may receive under all of the criteria.

(2) The minimum weights assigned to EDGAR criteria that are used under a program are stated in §§ 75.202-75.206.

(20 U.S.C. 1221e-3(a)(1))

§ 75.202 Selection criterion—plan of operation.

(a) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(b) The Secretary looks for information that shows—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(6) For grants to be made after October 1, 1980 under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools—a clear description of how the applicant will provide that opportunity.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 10 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

NOTE: Paragraph (b)(5), which is intended to ensure equal access and treatment for groups that have been traditionally underrepresented, does not mean that a grantee may include participants in a project who are ineligible under the program that funds the project. For example, under the program Early Education for Handicapped Children (See § 75.1), a grantee may not serve women or the elderly, and an applicant under that program would not consider these groups under paragraph (b)(5).

§ 75.203 Selection criterion—quality of key personnel.

(a) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(b) The Secretary looks for information that shows—

(1) The qualifications of the project director (if one is to be used);

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(c) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Under a program using weighted selection criteria, this criterion is assigned at least 7 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.204 Selection criterion—budget and cost effectiveness.

(a) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(b) The Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.205 Selection criterion—evaluation plan.

(a) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE. See § 75.590 Evaluation by the grantee.

(b) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(c) Under a program using weighted selection criteria, this criterion, is assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.206 Selection criterion—adequacy of resources.

(a) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 3 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.210 Selection criteria for a discretionary grant program that does not have regulations.

(a) *How this section works.* (1) If a discretionary grant program does not have implementing regulations, the Secretary uses the criteria in this section to evaluate applications for new grants under the program.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) Subject to paragraph (c) of this section, the maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.* (1) *Meeting the purposes of the authorizing statute.* (30 points)

(i) The Secretary reviews each application for information that shows how well the project will meet the purposes of the statute that authorizes the program.

(ii) In conducting this review, the Secretary looks for information that describes—

(A) The objectives of the project; and

(B) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points)

(i) The Secretary reviews each application for information that shows the project meets specific needs recognized in the statute that authorized the program.

(ii) In conducting this review, the Secretary looks for information that—

(A) Describes the needs addressed by the project;

(B) Describes how the applicant identified those needs;

(C) Describes how those needs will be met by the project; and

(D) Describes the benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 75.202.

(4) *Quality of key personnel.* (7 points)

The Secretary evaluates each application on the basis of the criterion in § 75.203.

(5) *Budget and cost effectiveness.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.204.

(6) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.205.

(7) *Adequacy of resources.* (3 points)

The Secretary evaluates each application on the basis of the criterion in § 75.206.

(c) *Weighting the criteria.* (15 points) The Secretary distributes an additional 15 points among the criteria listed in paragraph (b) of this section. The Secretary indicates in the application notice for the program how these 15 points are distributed.

(20 U.S.C. 3474)

[45 FR 84059, Dec. 22, 1980]

CROSS-REFERENCE. See § 75.101 Information in the application notice that helps an applicant apply.

SELECTION PROCEDURES

75.215 How the Department selects a new project: purpose of §§ 75.216–75.222.

Sections 75.216–75.222 describe the process the Secretary uses to select applications for new grants. All of these sections apply to a discretionary grant program. However, only § 75.216 applies also to a formula grant program.

CROSS-REFERENCE. See § 75.200(b) Discretionary grant program, and (e) Formula grant program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.216 Returning an application to the applicant.

(a) The Secretary returns an application to an applicant if—

(1) The applicant is not eligibile.

(2) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(3) The application does not contain the information required under the program; or

(4) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(b) If the Secretary returns an application under this section, the Secretary includes a statement that explains why the application was returned.

(20 U.S.C. 1221e-3(a)(1))

§ 75.217 How the Department selects applications for new grants.

(a) (1) The Secretary may use one or more groups of experts to evaluate the applications submitted under each program.

(2) Each group of experts consists of three or more persons who are qualified to evaluate the applications.

(3) In each group of experts, there must be at least one person who is not an employee of the Federal Government.

(4) A person may not serve as a member of a group of experts if—

(i) The person is an employee of ED who is involved in the administration of the program for which the group is evaluating applications; or

(ii) The person was involved within the past year in the administration of the program for which the group is evaluating applications.

(5) However, if the Secretary signs a waiver for a person covered by paragraph (a)(4) of this section, that person may serve as a member of a group of experts.

(b) A group of experts uses the selection criteria that apply to the program to evaluate the quality of each application.

(c) After the groups of experts have evaluated the applications, the Secretary prepares a rank ordering of the applications. The rank ordering of applications is based solely on the evaluations of the applications by the groups of experts.

(d) The Secretary then determines the order in which applications will be selected. The Secretary makes these determinations on the basis of the selection criteria and any priorities or other program requirements that have been published in the FEDERAL REGISTER and apply to the selection of applications for new grants. The Secretary may consider the following in making these determinations:

(1) The information in each application.

(2) The rank ordering of the applications.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants.

(e) The Secretary selects applications in the order determined under paragraph (d) of this section.

(20 U.S.C. 1221e-3(a)(1))

§ 75.218 Applications not selected for funding.

If an application is not selected for funding, the Secretary informs the applicant why the application was not selected.

(20 U.S.C. 1221e-3(a)(1))

§ 75.219 Exceptions to the procedures under § 75.217.

The Secretary may select an application for funding without following the procedures in § 75.217 if—

(a) The objectives of the project cannot be achieved unless the Secretary makes the grant before the date grants can be made under the procedures in § 75.217; or

(b) The applicant applies for funds under the Joint Funding Simplification Act; or

(c) (1) The application was evaluated by a group of experts under the preceding competition of the program;

(2) The group of experts rated the application high enough to deserve selection under § 75.217; and

(3) The application was not selected for funding because the application was mishandled by the Department.

(20 U.S.C. 1221e-3(a)(1); 42 U.S.C. 4252(a))

§ 75.220 Procedures the Department uses under § 75.219(a).

If the special circumstances of § 75.219(a) appear to exist for an application, the Secretary uses the following procedures:

(a) The Secretary assembles a board to review the application.

(b) The board consists of—

(1) A program officer of the program under which the applicant wants a grant;

(2) A Department grants officer; and

(3) A Department employee who is not a program officer of the program but who is qualified to evaluate the application.

(c) The board reviews the application to decide if—

(1) The special circumstances under § 75.219(a) are satisfied;

(2) The application rates high enough, based on the selection criteria, priorities, and other requirements that apply to the program, to deserve selection; and

(3) Selection of the application will not have an adverse impact on the budget of the program

(d) The board forwards the results of its review to the Secretary.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the Secretary may select the application for funding.

(f) Even if the Secretary does not select the application for funding, the applicant may submit its application under the procedures in Subpart C of this part.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

§ 75.221 Procedures the Department uses under § 75.219(b).

The Secretary uses the following procedures for an application submitted under § 75.219(b):

(a) The Secretary assembles a board to review the application.

(b)(1) The board consists of—

(i) A program officer from each Department program under which the applicant wants funds;

(ii) A Department grants officer; and

(iii) A Department employee who is not a program officer for any of the programs under which the applicant wants funds but who is qualified to review the application.

(2) The board may also include one or more persons who do not work for ED but who are qualified to review the application.

(c) The board reviews the application to decide if—

(1) The proposed project is feasible, and is consistent with Federal and agency policies concerning the scope and purpose of joint funding;

(2) The applicant has properly demonstrated a relationship among the programs included in the joint funding project;

(3) The proposed project is competitive with similar requests for program funds, including the applications submitted under the procedures in § 75.217;

(4) There will not be an adverse impact on the budget of any Department program under which the applicant wants funds if the project is funded; and

(5) The application rates high enough to deserve funding, based on the selection criteria and other requirements that apply to each Department program under which the applicant wants funds.

(d) The board forwards the results of its review to the Secretary.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the Secretary may—

(1) Select the project for funding; and

(2) Decide which Department programs will fund the project.

(42 U.S.C. 4252(a))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

§ 75.222 Procedures the Department uses under § 75.219(c).

If the special circumstances of § 75.219(c) appear to exist for an application, the Secretary may select the application for funding if—

(a) The Secretary has documentary evidence that the special circumstances of § 75.219(c) exist; and

(b) The Secretary has a statement that explains the circumstances of the mishandling.

(20 U.S.C. 1221e-3(a)(1))

PROCEDURES TO MAKE A GRANT

§ 75.230 How the Department makes a grant; purpose of §§ 75.231-75.236.

If the Secretary selects an application under §§ 75.217, 75.220, or 75.222, the Secretary follows the procedures in §§ 75.231-75.236 to set the amount and determine the conditions of a grant. Sections 75.235-75.236 also apply to grants under formula grant programs.

CROSS-REFERENCE. See § 75.200 How applications for new grants are selected for funding.

(20 U.S.C. 1221e-3(a)(1))

§ 75.231 Additional information.

After selecting an application for funding, the Secretary may require the applicant to submit additional information.

(20 U.S.C. 1221e-3(a)(1))

§ 75.232 The cost analysis; basis for grant amount.

(a) Before the Secretary sets the amount of a grant, the Secretary does a cost analysis of the project. The Secretary—

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The Secretary uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

(20 U.S.C. 1221e-3(a)(1))

§ 75.233 Setting the amount of the grant.

The Secretary may fund up to 100 percent of the allowable costs in the budget. In deciding what percent of the allowable costs to fund, the Secretary considers—

(a) Matching or cost sharing requirements that apply; and

(b) Any other financial resources available to the applicant.

(20 U.S.C. 1221e-3(a)(1))

§ 75.234 The conditions of the grant.

The Secretary makes a grant to an applicant only after determining—

(a) The approved costs; and

(b) Any special conditions.

(20 U.S.C. 1221e-3(a)(1))

§ 75.235 The notification of grant award.

(a) To make a grant, the Secretary issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

(20 U.S.C. 1221e-3(a)(1))

§ 75.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

APPROVAL OF MULTI-YEAR PROJECTS

§ 75.250 Project period can be up to 60 months.

(a) The Secretary may approve a project period of up to 60 months.

(b) If a project is approved under the Joint Funding Simplification Act, the Secretary may approve a project period of up to 60 months even if the Secretary has restricted the project period for other projects under the program.

(20 U.S.C. 1221e-3(a)(1); 42 U.S.C. 4252(a))

§ 75.251 The budget period.

(a) The Secretary usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the Secretary approves a multi-year project period, the Secretary—

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make contination awards to fund the remainder of the project period.

(20 U.S.C. 1221e-3(a))

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) The Secretary may make a continuation award for a budget period after the first budget period of an approved multi-year project if—

(1) The Congress has appropriated sufficient funds under the program;

(2) The Secretary is satisfied that the grantee will satisfactorily complete the budget period that is about to end;

(3) The grantee has submitted every report that it must submit before the date of the continuation award; and

(4) Continuation of the project is in the best interest of the Federal Government.

(b) Subject to the criteria in paragraph (a) of this section, in selecting applications for funding under a program the Secretary gives priority to contination awards over new grants.

(c) In determining the amount of a continuation award, the Secretary reduces the amount of funds needed for the next budget period by the amount of funds that remain available from the current budget period.

(d) A grantee that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects.

CROSS-REFERENCE. See Subpart C—How to Apply for a Grant.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See § 75.117 Information needed for a multi-year project; and § 75.118 Application for a continuation award.

§ 75.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

(a) If the conditions in § 75.253(a) are met, the Secretary may make a continuation award to a multi-year project funded under the Joint Funding Simplification Act.

(b) The Secretary decides whether to make a continuation award in cooperation with any other Federal agencies or any State agencies that are also funding the project.

(42 U.S.C. 4252(a))

MISCELLANEOUS

§ 75.260 Allotments and reallotments.

(a) Under some of the programs listed in § 75.1, the Secretary allots funds under a statutory or regulatory formula.

(b) Any reallotment to other grantees will be made by the Secretary in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.261 Extension of a project period.

The Secretary may extend a project period if—

(a) Special or unusual circumstances will delay completion of the project;

(b) The grantee provides the Secretary with a written request for the extension at least 45 days before the end of the project period;

(c) The grantee states the reasons why it needs the extension;

(d) The extension does not violate any statute or regulations;

(e) The extension does not involve the obligation of additional Federal funds; and

(f) The extension is to carry out the activities in the approved application.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

NONDISCRIMINATION

§ 75.500 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes and regulations:

Subject	Statute	Regulations
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e-3(a)(1))

PROJECT STAFF

§ 75.510 Use of a project director.

(a) This section applies to each grantee that uses a project director to administer its project.

(b) The grantee shall insure that its project director has—

(1) Appropriate professional qualifications, experience, and administrative skills, and

(2) A clear commitment to the objectives of the project.

(c) The grantee shall give its project director sufficient authority to conduct the project effectively.

(20 U.S.C. 1221e-3(a)(1))

§ 75.511 Waiver of requirement for a full-time project director.

(a) If regulations under a program require a full-time project director, the Secretary may waive that requirement under the following conditions:

(1) The project will not be adversely affected by the waiver.

(2) (i) The project director is needed to coordinate two or more related projects; or

(ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee—

(1) To use a part-time project director; or

(2) Not to use any project director.

(c) (1) An applicant or a grantee may request the waiver.

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The Secretary gives the waiver in writing. The waiver is effective on the date the Secretary signs the waiver.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR 74.103(c) Changes in key people in a research project.

§ 75.515 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless—

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need by using an employee rather than a consultant.

(20 U.S.C. 1221e-3(a)(1))

§ 75.516 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if—

(a) The work performed by the consultant is in addition to his or her regular departmental load; and

(b) (1) The consultation is across departmental lines; or

(2) The consultation involves a separate or remote operation.

(20 U.S.C. 1221e-3(a)(1))

§ 75.517 Changes in key staff members.

A grantee shall comply with 34 CFR 74.103(c)(2) concerning replacement or lesser involvement of any key project staff, whether or not the grant is for research.

(20 U.S.C. 1221e-3(a)(1))

§ 75.518 Minimum wage rates.

The grantee shall pay a project staff member not less than any minimum wage required under Federal Law.

(20 U.S.C. 1221e-3(a)(1))

§ 75.519 Dual compensation of staff.

A grantee may not use its grantee to pay a project staff member for time or work for which that staff member is compensated from some other source of funds.

(20 U.S.C. 1221e-3(a)(1))

CONFLICT OF INTEREST

§ 75.524 Conflict of interest: Purpose of § 75.525.

(a) The conflict of interest regulations of the Department that apply to a grant are in § 75.525.

(b) These conflict of interest regulations do not apply to a "government" as defined in 34 CFR 74.3.

NOTE: A government must provide a conflict of interest assurance under the standard application required by Subpart N of 34 CFR Part 74 (Forms for Applying for Grants).

(c) The regulations in § 75.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 34 CFR Part 74.

§ 75.525 Conflict of interest: Participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if—

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

(2) The person—

(i) Is a public official; or

(ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private financial gain for that person or for others.

(20 U.S.C. 1221e-3(a)(1))

ALLOWABLE COSTS

§ 75.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are referenced in Subpart Q of 34 CFR Part 74 (Cost Principles).

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 75.531 Limit on total cost of a project.

A grantee shall insure that the total cost to the Federal Government is not more than the amount stated in the notification of grant award.

(20 U.S.C. 1221e-3(a)(1))

§ 75.532 Use of funds for religion prohibited.

(a) No grantee may use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of those activities.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e-3(a)(1))

§ 75.533 Acquisition of real property; construction.

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

§ 75.534 Training grants—automatic increases for additional dependents.

The Secretary increases an educational training grant to cover the cost of additional dependents not specified in the notification of grant award if—

(a) Allowances for those dependents are authorized by the program statute and are allowable under the grant; and

(b) Appropriations are available to cover the cost.

(20 U.S.C. 1221e-3(a)(1))

INDIRECT COST RATES

§ 75.560 General indirect cost rates; exceptions.

(a) Appendices C-F to 34 CFR Part 74 describe the differences between direct and indirect costs and include the principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

(b) Sections 75.562-75.568 provide restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e-3(a)(1))

§ 75.561 Approval of indirect cost rates.

(a) The Secretary approves an indirect cost rate for a grantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

§ 75.562 Indirect cost rates for educational training projects.

(a) The Secretary may approve an indirect cost rate for an educational training project at the lesser of—

(1) The actual indirect cost rate of the grantee; or

(2) Eight percent of the total direct costs of the project.

(b) This section does not apply to—

(1) A State (as defined in 34 CFR 74.3); or

(2) A local government (as defined in 34 CFR 74.3).

(20 U.S.C. 1221e-3(a)(1))

§ 75.563 Restricted indirect cost rate—programs covered.

Sections 75.564-75.568 apply to each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Bilingual Education	Title VII-A of the Elementary and Secondary Education Act.
Consumer Education Program.	Title III-E of the Elementary and Secondary Education Act.
Environmental Education Program.	Title III-H of the Elementary and Secondary Education Act.
Safe Schools	Title IX-D of the Elementary and Secondary Education Act.
Follow Through Program	Sections 551-556 of the Economic Opportunity Act of 1964.
National Alcohol and Drug Abuse Prevention Program.	Public Law 93-422.
Indian Education Act (Part A)	Title IV-A of Public Law 92-318.

(20 U.S.C. 1221e-3(a)(1))

§ 75.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant under a program covered by § 75.563 is determined by the following formula:

Indirect cost rate = (Administrative charge + Fixed charges) ÷ (Other expenditures)

(b) Administrative charges, fixed charges, and other expenditures must be determined under §§ 75.565-75.567.

(c) Under the programs covered by § 75.563, a grantee other than a State or a local government (as those terms are defined in 34 CFR 74.3) may use—

(1) An indirect cost rate computed under paragraph (a) of this section; or

(2) An indirect cost rate of eight percent unless the Secretary determines that the grantee would have a lower rate under paragraph (a) of this section.

(20 U.S.C. 1221e-3(a)(1))

§ 75.565 Administrative charge.

(a) As used in § 75.564, "administrative charge" means the cost of an activity that is for the direction and control of the grantee's affairs that are organization-wide. An activity is not organization-wide if it is limited to one activity, one component of the grantee, one subject, one phase of operations, or other single responsibility.

(b) The term includes the cost of performing a service function, such as accounting, payroll preparation, or personnel management, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management.

(c) The term does not include expenditures for—

(1) The governing body of the grantee;

(2) Compensation of the chief administrative officer of the grantee;

(3) Compensation of the chief administrative officer of any component of the grantee; and

(4) Operation of the immediate offices of these officers.

(20 U.S.C. 1221e-3(a)(1))

§ 75.566 Fixed charges.

As used in § 75.564, "fixed charges" means contributions of the grantee to—

(a) Retirement, including State, county, or local retirement funds, Social Security, and pension payments;

(b) Unemployment compensation payments;

(c) Property, employee, health, and liability insurance; and

(d) All similar costs normally considered to be employee fringe benefits.

(20 U.S.C. 1221e-3(a)(1))

§ 75.567 Other expenditures.

(a) As used in § 75.564, "other expenditures" means the grantee's total expenditures for its federally- and non-federally-funded activities in the most recent year for which data are available.

(b) The term does not include—

(1) Administrative charges determined under § 75.565;

(2) Fixed charges determined under § 75.566;

(3) Capital outlay;

(4) Debt service;

(5) Fines and penalties;

(6) Contingencies; and

(7) Election expenses. However, the term does include election expenses that result from elections required by a program statute.

(20 U.S.C. 1221e-3(a)(1))

§ 75.568 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 75.563, the maximum amount of indirect costs under a grant is determined by the following formula:

Indirect costs = (Indirect cost rate) × (Total direct costs of the grant minus any costs for capital outlay, debt service, or election expenses unless the election is required by a program statute)

(b) If a grantee uses an indirect cost rate, the administrative and fixed charges covered by that rate must be excluded by the grantee from the direct costs it charges to the grant.

(20 U.S.C. 1221e-3(a)(1))

COORDINATION

§ 75.580 Coordination with other activities.

(a) A grantee shall, to the extent possible, coordinate its project with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A grantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The grantee shall continue its coordination during the project period.

(20 U.S.C. 1221e-3(a)(1); 2890)

§ 75.581 Methods of coordination.

Depending on the objectives and requirements of its project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment, evaluation, monitoring, and technical assistance or staff training.

(d) Using the grant funds so as not to duplicate or counteract the effects of funds made available under other programs.

(e) Using the grant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e-3(a)(1))

EVALUATION

§ 75.590 Evaluation by the grantee.

A grantee shall evaluate at least annually—

(a) The grantee's progress in achieving the objectives in its approved application;

(b) The effectiveness of the project in meeting the purposes of the program; and

(c) The effect of the project on persons being served by the project, including—

(1) Any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(2) If the program statute requires that private school students be provided an opportunity to participate, the students who are enrolled in private schools.

(20 U.S.C. 1221e-3(a)(1))

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(20 U.S.C. 1226c, 1231a)

[45 FR 86297, Dec. 30, 1980]

§ 75.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee meets the evaluation requirements of the program, including § 75.590.

(20 U.S.C. 1226c, 1231a)

CONSTRUCTION

CROSS-REFERENCE. See 34 CFR Part 74, Subpart P—Procurement Standards.

§ 75.600 Use of a grant for construction: purpose of §§ 75.601-75.615.

Sections 75.601-75.615 apply to—

(a) An applicant that requests funds for construction; and

(b) A grantee whose grant includes funds for construction.

(20 U.S.C. 1221e-3(a)(1))

§ 75.601 Applicant's assessment of environmental impact.

An applicant shall include with its application its assessment of the impact of the proposed construction on the quality of the environment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(C))

§ 75.602 Preservation of historic sites must be described in the application.

(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is—

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places.

(CROSS-REFERENCE. See 36 CFR Part 60 for these criteria.)

(b) In deciding whether to make a grant, the Secretary considers—

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments by the Advisory Council on Historic Preservation.

CROSS-REFERENCE. See 36 CFR Part 800, which provides for comments from the Council.

(16 U.S.C. 470f)

§ 75.603 Grantee's title to site.

A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

(20 U.S.C. 1221e-3(a)(1))

§ 75.604 Availability of cost-sharing funds.

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(20 U.S.C. 1221e-3(a)(1))

§ 75.605 Beginning the construction.

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made.

(b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the Secretary of the final working drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 75.606 Completing the construction.

(a) A grantee shall complete its construction within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 75.607 General considerations in designing facilities and carrying out construction.

(a) A grantee shall insure that the construction is—

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend more than one percent of the cost of the project on inclusion of works of art.

(20 U.S.C. 1221e-3(a)(1))

§ 75.608 Areas in the facilities for cultural activities.

A grantee shall make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(20 U.S.C. 1221e-3(a)(1))

§ 75.609 Comply with safety and health standards.

In planning for and designing facilities, a grantee shall observe—

(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR Part 1910); and

(b) State and local codes, to the extent that they are more stringent.

(29 U.S.C. 651)

§ 75.610 Access by the handicapped.

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are—

(a) For residential facilities—24 CFR Part 40; and

(b) For non-residential facilities—41 CFR Subpart 101-19.6.

(20 U.S.C. 1221e-3(a)(1))

§ 75.611 Avoidance of flood hazards.

In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (43 FR 6030) and rules and regulations that may be issued by the Secretary to carry out those provisions—

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

(Executive Order 11296)

§ 75.612 Supervision and inspection by the grantee.

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 75.613 Relocation assistance by the grantee.

A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR Part 15.

(20 U.S.C. 1221e-3(a)(1))

§ 75.614 Grantee must have operational funds.

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.

(20 U.S.C. 1221e-3(a)(1))

§ 75.615 Operation and maintenance by the grantee.

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 75.616 Energy conservation.

(a) To the extent feasible, the grantee shall design and construct facilities to maximize the efficient use of energy and to minimize the use of petroleum and natural gas as energy sources.

(b) Standard 90-75 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is incorporated by reference in this section.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register on August 25, 1980. Incorporated document is on file at the FEDERAL REGISTER.

Copies of ASHRAE 90-75 may be obtained from the Publication Sales Department, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 345 East 47th Street, New York, New York 10017.

(c) A grantee shall comply with ASHRAE Standard 90-75 in designing and constructing facilities built with project funds.

(42 U.S.C. 8373(b); E.O. No. 12185)

[45 FR 58013, Aug. 29, 1980]

EQUIPMENT AND SUPPLIES

CROSS-REFERENCE. See 34 CFR Part 74, Subpart O—Property.

§ 75.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

(20 U.S.C. 1221e-3(a)(1))

PUBLICATIONS AND COPYRIGHTS

§ 75.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required Statement.* The grantee shall ensure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government."

(20 U.S.C. 1221e-3(a)(1); 20 U.S.C. 3474)

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

§ 75.621 Copyright policy for grantees and contractors.

(a) A grantee may copyright project materials in accordance with 34 CFR Part 74.

(b) A contractor may not copyright any project materials developed under the contract unless specifically permitted in the contract to do so.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart F—Grant-Related Income; and 34 CFR 74.145 Copyrights.

§ 75.622 Definition of "project materials."

As used in §§ 75.620-75.621, "project materials" means a copy-rightable work developed with funds from a grant or contract of the Department.

(20 U.S.C. 1221e-3(a)(1))

INVENTIONS AND PATENTS

CROSS-REFERENCE. See 34 CFR Part 74.44 Inventions and Patents.

§ 75.625 Invention and patent policy.

Grantees and contractors are subject to the ED policy in 34 CFR Parts 6 and 8 regarding inventions and patents.

§ 75.626 Show Federal support; give papers to vest title.

(a) Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the Department of Education."

(b) On request, the grantee shall furnish ED with executed instruments prepared by the Federal Government, and other papers that may be necessary, to vest in the Federal Government the rights reserved in accordance with a determination made under 34 CFR Part 8. These instruments and papers enable the Government to apply for and prosecute a patent application, in any country, to cover each invention for which the Federal Government has the right to file an application.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

OTHER REQUIREMENTS FOR CERTAIN PROJECTS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart C—Bonding and Insurance.

§ 75.650 Participation of students enrolled in private schools.

If the authorizing statute for a program requires a grantee to provide for participation by students enrolled in private schools, the grantee shall provide a genuine opportunity for equitable participation in accordance with the requirements that apply to subgrantees under 34 CFR 76.650-76.662.

(20 U.S.C. 1221e-3(a)(1))

§ 75.681 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 45 CFR Part 46—Protection of Human Research Subjects.

§ 75.682 Treatment of animals.

If a grantee uses an animal in a project, the grantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89-544, as amended)

§ 75.683 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

(20 U.S.C. 1221e-3(a)(1))

§ 75.684 Day care services.

(a) If a grantee uses program funds to provide day care services, the grantee shall comply with the requirements in 45 CFR Part 71.

(b) The Secretary may waive this requirement by publication of a notice in the FEDERAL REGISTER.

(20 U.S.C. 1221e-3(a)(1))

§ 75.690 Energy conservation awareness.

To the extent that it is consistent with the statute and regulations for any program, the grantee shall consider incorporating into its program a component on energy awareness. This component may include study of the problems, solutions, and alternatives relating to the Nation's energy crisis.

(42 U.S.C. 8373(b); E.O. No. 12185)

[45 FR 58013, Aug. 29, 1980. Redesignated at 45 FR 77368; Nov. 21, 1980]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 75.700 Compliance with statutes, regulations, and applications.

A grantee shall comply with applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(20 U.S.C. 1221e-3(a)(1))

§ 75.701 The grantee administers or supervises the project.

A grantee shall directly administer or supervise the administration of the project.

(20 U.S.C. 1221e-3(a)(1))

§ 75.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 75.703 Obligation of funds during the grant period.

A grantee may use grant funds only for obligations it makes during the grant period.

(20 U.S.C. 1221e-3(a)(1))

§ 75.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee.	When the services are performed.
(c) Personnal services by a contractor who is not an employee of the grantee.	On the date on which the grantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the grantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the grantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the grantee uses the property.
(h) A preagreement cost that was properly approved by the Secretary under the cost principles in appendices C–F to 45 CFR Part 74.	On the first day of the grant period.

(20 U.S.C. 1221e-3(a)(1))

§ 75.708 Prohibition of subgrants.

(a) A grantee may not make a subgrant under a program listed in § 75.1 unless specifically authorized by statute.

(b) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 34 CFR Part 74, Subpart P—Procurement Standards.

(20 U.S.C. 1221e-3(a)(1))

REPORTS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under 34 CFR Part 74, Subpart I (financial reporting) and Subpart J (performance reporting).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of the National Institute of Education to submit performance reports more often than annually.

(c) The Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (Grantee accounting systems), require a grantee to report more frequently than annually.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86297, Dec. 30, 1980]

§ 75.721 Reports under the Joint Funding Simplification Act.

(a) The Secretary determines the frequency and scope of reports necessary to assure proper monitoring of a grant under the Joint Funding Simplification Act.

(b) The Secretary makes this determination in cooperation with any other Federal or State agencies that are also funding the grant.

(42 U.S.C. 4252(a))

RECORDS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 75.730 Records related to grant funds.

A grantee shall keep records that fully show—

(a) The amount of funds under the grant;

(b) How the grantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 75.731 Records related to compliance.

A grantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 75.732 Records related to performance.

(a) A grantee shall keep records of significant project experiences and results.

(b) The grantee shall use the records under paragraph (a) to—

(1) Determine progress in accomplishing project objectives; and

(2) Revise those objectives, if necessary.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR 74.103 (b) and (c)—Procedures for revising objectives.

§ 75.733 Records related to State approval applications.

(a) This section applies to programs that require State approval of applications.

(b) The State shall keep a complete case file on each application it receives.

(c) The State shall keep a full record of—

(1) Any hearing related to an application; and

(2) Any proceeding by which the State establishes relative priorities or recommends Federal shares for eligible projects.

(20 U.S.C. 1221e-3(a)(1))

§ 75.734 Record retention period.

Unless a longer period is required under 34 CFR Part 74, a grantee shall retain records for five years after the completion of the activity for which it uses grant funds.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1232f(a))

[45 FR 22497, Apr. 3, 1980. Redesignated at 34 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

CROSS-REFERENCE. See 34 CFR Part 74.21—Length of retention period; and 74.22 Starting date of retention period.

PRIVACY

§ 75.740 Protection of and access to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations in 34 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231(g))

§ 75.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Department is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teacher's manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Department, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning any of the following:

(1) Political affiliations.

(2) Mental and psychological problems potentially embarrassing to the student or his family.

(3) Sex behavior and attitudes.

(4) Illegal, anti-social, self-incriminating and demeaning behavior.

(5) Critical appraisals of other individuals with whom respondents have close family relationships.

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers.

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor) or, in the case of unemancipated minor, without the prior written consent of the parent.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1232h)

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

DATA COLLECTION BY A GRANTEE

§ 75.750 Approval of data collection instruments.

(a) The Department is the sponsor of the data collection activity of a grantee in any of the following circumstances:

(1) The grantee represents to respondents that the data is being collected for or in association with the Department. This does not include acknowledgment of the assistance the grantee received under the grant.

(2) The grantee uses the data collection instrument to collect data that the Department has requested for the planning, operation, or evaluation of an Education Department Federal program.

(3) The grant provides for Department approval of the survey design, content of the instrument, or data collection procedures.

(4) The grant provides for—

(i) The grantee to submit data on individual respondents; or

(ii) The grantee to prepare and submit tabulations of the data requested by the Department.

(b) If the Education Divison sponsors a data collection activity of a grantee, the data collection instruments to be used by the grantee are subject to review under either—

(1) The paperwork control requirements of Section 400A of GEPA (the Federal Education Data Acquisition Council (FEDAC) procedures); or

(2) The requirements under OMB Circular A-40.

(c) The FEDAC procedures apply to a data collection activity sponsored by the Department if—

(1) The respondents are primarily educational agencies or institutions; and

(2) The purpose of the activity is to get information needed for—

(i) The management of Federal educational programs;

(ii) The development of policy related to those programs; or

(iii) Research or evaluation studies related to the implementation of those programs.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

CROSS-REFERENCE. See the FEDAC procedures published in the FEDERAL REGISTER on August 8, 1979 (44 FR 46535).

§ 75.751 Procedures if approval is required.

If approval of a data collection instrument is required under the FEDAC procedures or under OMB Circular A-40, the grantee shall submit an original and four copies of each of the following to the Secretary:

(a) The proposed data collection instrument.

(b) A completed OMB Standard Form 83.

(c) The supporting statement required in the "Instructions for Requesting OMB Approval under the

Federal Reports Act," as described in standard form 83A.

(d) Supplementary information required by FEDAC under the procedures published in the FEDERAL REGISTER on August 8, 1979 (44 FR 46535).

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 75.752 Responsibility for data collection.

Unless FEDAC or the OMB approves a data collection instrument, the grantee may not in any way represent or imply that the data is being collected by or for the Federal Government. This does not preclude the grantee from acknowledging the assistance it received under the grant.

(20 U.S.C. 1221e-3(a)(1))

§ 75.753 Confidentiality of response.

In using data collection instruments, a grantee shall provide for anonymity and confidentiality of responses from individuals.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 75.754 Exemption from coverage.

The regulations in §§ 75.750-75.753 do not apply to data collection instruments that are solely—

(a) Tests or examinations to determine knowledge, ability, or aptitude of individuals; or

(b) Instruments to collect data for identification or classification in connection with those tests or examinations.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 75.755 Definitions used in §§ 75.750-75.754.

As used in §§ 75.750-75.754—

"Data collection instrument" means a report form, application form, schedule, questionnaire, or similar instrument for getting answers to identical questions from ten or more respondents.

"Respondent" is an individual or organization from whom a grantee collects information either directly or indirectly.

(20 U.S.C. 1221e-3(a)(1))

Subpart G—What Procedures Does the Department Use To Get Compliance?

CROSS-REFERENCE. See 34 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 75.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(43 Dec. Comp. Gen. 31 (1963))

§ 75.901 Suspension and termination.

(a) [Reserved]

(b) The Secretary may use the Education Appeal Board to resolve disputes that are not subject to other procedures. Cross-reference: See the following sections in Part 74:

(1) Section 74.113 (Violation of terms).

(2) Section 74.114 (Suspension).

(3) Section 74.115 (Termination).

(4) The last sentence of § 74.73(c) (Financial reporting after a termination).

(5) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e-3(a)(1))

[45 FR 86297, Dec. 30, 1980]

§ 75.902 [Reserved]

§ 75.903 Effective date of termination.

Termination is effective on the latest of—

(a) The date of delivery to the grantee of the notice of termination;

(b) The termination date given in the notice of termination; or

(c) The date of a final decision of the Secretary under Part 78 of this title.

(20 U.S.C. 1221e-3(a)(1); 20 U.S.C. 3474)

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

PART 76—STATE-ADMINISTERED PROGRAMS

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

Sec.
76.1 Programs to which Part 76 applies.
76.2 Exceptions in program regulations to Part 76.
76.3 ED general grant regulations apply to these programs.

ELIGIBILITY FOR A GRANT OR SUBGRANT

76.50 Statutes determine eligibility and whether subgrants are made.
76.51 A State distributes funds by formula or competition.

Subpart B—How a State Applies for a Grant

STATE PLANS AND APPLICATIONS

76.100 Effect of this subpart.
76.101 The general State application.
76.102 Definition of "State plan" for Part 76.
76.103 Three-year State plans.
76.104 A State shall include certain certifications in its State plan.
76.105 The Governor has 45 days to comment on the State plan.
76.106 State documents are public information.

CONSOLIDATED GRANT APPLICATIONS FROM INSULAR AREAS

Scope and Applicability

76.125 Purpose of §§ 76.125 through 76.135.
76.126 Regulations that apply.
76.127 Purpose of a consolidated grant.
76.128 What is a consolidated grant?
76.129 How a consolidated grant works.
76.130 How consolidated grants are made.
76.131 How to apply for a consolidated grant.
76.132 Consolidated grant application assurances.
76.133 Reallocation authority.
76.134 Relationship between consolidated and non-consolidated grants.
76.135 Matching.

AMENDMENTS

76.140 Amendments to a State plan.
76.141 An amendment requires the same procedures as the document being amended.
76.142 An amendment is approved on the same basis as the document being amended.

Subpart C—How a Grant Is Made to a State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

Sec.
76.201 A State plan must meet all statutory and regulatory requirements.
76.202 Opportunity for hearing before a State plan is disapproved.
76.235 The notification of grant award.

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

76.260 Allotments are made under program statute.
76.261 Realloted funds are part of a State's grant.

Subpart D—How To Apply to the State for a Subgrant

76.300 Contact the State for procedures to follow.
76.301 Local educational agency general application.
76.302 The notice to the subgrantee.
76.303 Joint applications and projects.
76.304 Subgrantee shall make subgrant application available to the public.
76.305 Amendments to applications.

Subpart E—How a Subgrant Is Made to an Applicant

76.400 State procedures for reviewing an application.
76.401 Disapproval of an application—opportunity for a hearing.

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

NONDISCRIMINATION

76.500 Federal statutes and regulations on nondiscrimination.

ALLOWABLE COSTS

76.530 General cost principles.
76.532 Use of funds for religion prohibited.
76.533 Acquisition of real property; construction.
76.534 Use of tuition and fees restricted.

INDIRECT COST RATES

76.560 General indirect cost rates; exceptions.
76.561 Approval of indirect cost rates.
76.563 Restricted indirect cost rate—programs covered.

COORDINATION

76.580 Coordination with other activities.
76.581 Methods of coordination.

EVALUATION

Sec.

76.591 Federal evaluation—cooperation by a grantee.
76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

CONSTRUCTION

76.600 Where to find construction regulations.

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

76.650 Private schools; purpose of §§ 76.651-76.662.
76.651 Responsibility of a State and a subgrantee.
76.652 Consultation with representatives of private school students.
76.653 Needs, number of students, and types of services.
76.654 Benefits for private school students.
76.655 Level of expenditures for students enrolled in private schools.
76.656 Information in an application for a subgrant.
76.657 Separate classes prohibited.
76.658 Funds not to benefit a private school.
76.659 Use of public school personnel.
76.660 Use of private school personnel.
76.661 Equipment and supplies.
76.662 Construction.

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

76.681 Protection of human research subjects.
76.682 Treatment of animals.
76.683 Health or safety standards for facilities.
76.684 Day care services.
76.690 Energy conservation awareness.

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

76.700 Compliance with statutes, regulations, State plan, and applications.
76.701 The State or subgrantee administers or supervises each project.
76.702 Fiscal control and fund accounting procedures.
76.703 When a State may begin to obligate funds.
76.704 When certain subgrantees may begin to obligate funds.
76.705 Funds may be obligated during a "carryover period."
76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

Sec.

76.707 When obligations are made.

REPORTS

76.720 Financial and performance reports by a State.
76.722 A subgrantee makes reports required by the State.

RECORDS

76.730 Records related to grant funds.
76.731 Records related to compliance.
76.734 Record retention period.

PRIVACY

76.740 Protection of and accessibility to student records.
76.741 Protection of students' privacy in research and testing.

USE OF FUNDS BY STATES AND SUBGRANTEES

76.760 More than one program may assist a single activity.
76.761 Federal funds may pay 100 percent of cost.

STATE ADMINISTRATIVE RESPONSIBILITIES

76.770 A State shall perform certain duties with respect to the applications for subgrants.
76.771 A State shall encourage eligible applicants to apply.
76.772 Other responsibilities of the State.

COMPLAINT PROCEDURES OF THE STATE

76.780 A State shall adopt complaint procedures.
76.781 Minimum complaint procedures.
76.782 An organization or individual may file a complaint.
76.783 State educational agency action—subgrantee's opportunity for a hearing.

Subpart H—What Procedures Does the Secretary Use To Get Compliance?

76.900 Waiver of regulations prohibited.
76.901 Education Appeal Board.
76.902 Judicial review.

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NOMENCLATURE CHANGES: 45 FR 86296, Dec. 30, 1980.

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

§ 76.1 Programs to which Part 76 applies.

(a) The regulations in Part 76 apply to each program of the Department of Education that is listed in the table following this section or whose regulations specifically state that Part 76 applies. In addition to the name of the program, the table gives the statute that authorizes the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

NOTE: Some programs are not currently funded. Check with the State agency responsible for administering the program.

(b) If a State-administered program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State-administered program" means a program whose authorizing statute provides a formula for allocating program funds among eligible States.

Name of program	Authorizing statute	Implementing regulations (34 CFR)	CFDA No.
A. Elementary and Secondary Education Programs			
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children—See 45 CFR Part 100a).	Title I-A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701-2754).	Parts 200 and 201.	84.009 and 84.012.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151-153 of the Elementary and Secondary Education Act (20 U.S.C. 2781-2783).	Parts 200 and 203.	84.009 and 84.013.
Grants to State Educational Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Section 141-143 of the Elementary and Secondary Education Act (20 U.S.C. 2761-2763).	Parts 200 and 204.	84.009 and 84.011.
State Basic Skills Program	Title II-B of the Elementary and Secondary Education Act (20 U.S.C. 2901-2904).	Part 765	84.067.
Financial Assistance for School Library Resources, Textbooks and Other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978).	None.
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978).	None.
Educational Improvement, Resources, and Support.	Title IV of the Elementary and Secondary Education Act (20 U.S.C. 1801-1832).	Part 774	84.088 and 84.084
Strengthening State Educational Agency Management.	Title V-B of the Elementary and Secondary Education Act (20 U.S.C. 3161-3163).	None	None.
Federal Financial Assistance for Strengthening State Departments of Education—Basic Grants.	Title V-A (except Section 505—See 34 CFR Part 75) of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978).	84.043.
Community Schools Program	Title VIII of the Elementary and Secondary Education Act (except Sections 809-813—See 75) (20 U.S.C. 3281-3288).	Part 440, Subpart B.	84.081.
Gifted and Talented Children Program	Title IX of the Elementary and Secondary Education Act (except section 905—See 45 CFR Part 100a) (20 U.S.C. 3311-3314; 3316-3318).	Part 345	84.080.
Strengthening Instruction in Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act of 1958 (20 U.S.C. 441-444).	See 43 FR 57254 (December 7, 1978).	None.

Name of program	Authorizing statute	Implementing regulations (34 CFR)	CFDA No.
B. Education of the Handicapped Programs			
State-operated Programs for Handicapped Children.	Sections 146–147 of the Elementary and Secondary Education Act (20 U.S.C. 2771-2772).	Parts 200 and 201.	84.009 and 84.080.
Assistance to States for Education of Handicapped Children.	Part B of the Education of the Handicapped Act (20 U.S.C. 1411-1418; 1420).	Part 301	84.027.
Incentive Grants	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	Part 301	84.027.
C. Occupational and Adult Education Programs			
State Vocational Education Programs	Part A of Title I of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 400	84.048, 84.049, 84.050, and 84.052.
Career Education—State Allotment Program.	Career Education Incentive Act (except Sections 10, 11, and 12—See 45 CFR Part 100a) (20 U.S.C. 1201-2614).	Part 295	None.
State Adult Education Programs	Adult Education Act (except Sections 309, 314, 317, and 318—See 45 CFR Part 100a), (20 U.S.C. 1201-1211a).	Part 425	84.002.
D. Higher Education Programs			
Community Service and Continuing Education Programs (except Special Programs and Projects—See 45 CFR Part 100a).	Title I of the Higher Education Act (except Section 106) (20 U.S.C. 1001-1005; 1006-1011).	Part 610 (except Subpart C).	84.046.
State Student Incentive Grant Program	Sections 415A-415E of the Higher Education Act (20 U.S.C. 1070c through 1070c-4).	Part 692	84.063.
Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d-2 and 1070d-3).	Part 606	84.098.
Incentive Grants for State Student Financial Assistance Training Program.	Section 493C of the Higher Education Act (20 U.S.C. 1088b-3).	Part 695	84.096.
State Postsecondary Education Commissions Program—Intrastate Planning.	Section 1203(a) of the Higher Education Act (20 U.S.C. 1142b(a)).	Part 605	84.071.
E. Other Programs			
Library Services, Public Library Construction and Interlibrary Cooperation.	Library Services and Construction Act (20 U.S.C. 351-355e-2).	Part 770	84.034 and 84.035.
Assistance to States for State Equalization Plans.	Section 842 of the Education Amendments of 1974 (20 U.S.C. 246).	None	None.

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980]

§ 76.2 Exceptions in program regulations to Part 76.

If a program has regulations that are not consistent with Part 76, the implementing regulations for that program identify the sections of Part 76 that do not apply.

(20 U.S.C. 1221e-3(a)(1))

§ 76.3 ED general grant regulations apply to these programs.

The ED general grant regulations in 34 CFR Part 74 apply to the programs covered by this part. To find subjects covered under 34 CFR Part 74, look in the table of contents at the beginning of 34 CFR Part 74.

(20 U.S.C. 1221e-3(a)(1))

ELIGIBILITY FOR A GRANT OR SUBGRANT

§ 76.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program listed in § 76.1, the Secretary makes a grant—

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may—

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 76 on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart E—Waiver of Single State Agency Requirements.

§ 76.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute—

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(20 U.S.C. 1221e-3(a)(1))

Subpart B—How a State Applies for a Grant

STATE PLANS AND APPLICATIONS

§ 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program listed in § 76.1. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.101 The general State application.

(a) This section applies to the programs listed in § 76.1 under which a State educational agency may make subgrants to local educational agencies.

(b) (1) A State shall submit to the Secretary a general application that contains the assurances contained in paragraph (e) of this section.

(2) The State may submit—

(i) A single general application to cover all of the programs; or

(ii) More than one general application, each general application covering either a group of programs or an individual program.

(c) A general application must be approved by each official, agency, board, or other entity within the State that, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(d) Each general application submitted under this section remains in effect for the duration of any program it covers. The Secretary does not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(e) A general application must include assurances, satisfactory to the Secretary—

(1) That each program will be administered in accordance with all applicable statutes, regulations, State plans, and applications;

(2) That the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private agency, institution, or organization will administer the funds and property;

(3) That the State will adopt and use proper methods of administering each program, including—

(i) Monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;

(ii) Providing technical assistance, if necessary, to those agencies, institutions, and organizations;

(iii) Encouraging the adoption of promising or innovative educational techniques by those agencies, institutions, and organizations;

(iv) The dissemination throughout the State of information on program requirements and sucessful practices; and

(v) The correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) That the State will evaluate the effectiveness of each program in meeting statutory objectives—not less often than once every three years—and that the State will cooperate in carrying out any evaluation of a program conducted by or for the Secretary or other Federal official;

(5) That the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) That the State will—

(i) Make reports to the Secretary—including reports on the results of evaluations required under paragraph (e)(4) of this section—as may reasonably be necessary to enable the Secretary to perform his or her duties under each program; and

(ii) Maintain records, in accordance with the requirements of Section 437 of GEPA—and afford access to those records as the Secretary may find necessary to carry out his or her duties; and

(7) That the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(i) The State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of State plans.

(ii) The State will publish each proposed State plan, in a manner that will ensure circulation throughout the State, at least 60 days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the plan to be accepted for at least 30 days.

(iii) The State will hold public hearings on the proposed State plans if required by the Secretary by regulation.

(iv) The State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

(20 U.S.C. 1232d)

NOTE 1: The Secretary interprets Section 435 of GEPA—implemented in this section—not to apply to State Vocational Education Programs. (See § 76.1) This interpretation is based on the legislative history of both GEPA and the Vocational Education Act.

NOTE 2: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.102 Definition of "State plan" for Part 76.

As used in this part, "State plan" means any of the following documents:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141-143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II-B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V-B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V-A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III-A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial asistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan and the annual programs under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(x) *Programs that do not have regulations.* If a State-administered program does not have implementing regulations, the documents that the authorizing statute for the program requires a State to submit to receive a grant.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84060, Dec. 22, 1980]

CROSS-REFERENCE. See § 76.1 Programs to which Part 76 applies. This section includes a definition of "State-administered program" and a table of citations for the programs listed in § 76.102.

§ 76.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Secretary determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Secretary may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to—

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act; and

(3) The application under Sections 141-143 of the Elementary and Secondary Education Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1231g(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.105 The Governor has 45 days to comment on the State plan.

(a) Before a State submits a State plan to the Secretary, the State shall give its Governor 45 days to comment on the plan.

(b) The State shall attach to the plan any comments the Governor makes.

(c) If the Governor does not comment, the offical who submits the State plan shall certify that—

(1) The State submitted the plan to the Governor at least 45 days before submitting it to the Secretary; and

(2) The Governor did not comment.

(20 U.S.C. 1221e-3(a)(1))

§ 76.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Secretary transmits to the State regarding a program.

(20 U.S.C. 1221e-3(a)(1))

CONSOLIDATED GRANT APPLICATIONS FROM INSULAR AREAS

AUTHORITY: Title V, Pub. L. 95-134.

(48 U.S.C. 1469a)

SOURCE: Sections 76.125—76.135 appear at 45 FR 22649, Apr. 3, 1980, unless otherwise noted.

Scope and Applicability

§ 76.125 Purpose of §§ 76.125 through 76.135.

(a) The provisions of §§ 76.125 through 76.135 set forth requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs listed in the table in paragraph (c) of this section.

(b) For the purpose of §§ 76.125 through 76.135, the term "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(c) (1) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more of the programs in the following table. The table indicates the number of the program in the Catalog of Federal Domestic Assistance (CFDA), the name of the program, the statute that authorizes it, and the regulations that implement it.

CFDA No. and name of program	Authorizing statute	Implementing regulations—title 34, CFR
84.081 State Adult Education Programs	Adult Education Act (except Sections 309, 317 and 318) (20 U.S.C. 1201-1211a).	Part 440.
84.034 Construction of Public Libraries	Title II, Library Services and Construction Act (20 U.S.C. 355a-355c).	Part 770.
84.012 State Operated Programs for Handicapped Children.	Title I, Part B, Sections 146-147 of the Elementary and Secondary Education Act (20 U.S.C. 2771-2772).	Parts 200 and 302.
84.009 Financial Assistance to Local Education Agencies to Meet the Special Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children).	Title I, Part A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701-2754).	Parts 200 and 201.
84.011 Grants to State Educational Agencies for Programs to Meet Special Educational Needs of Migrant Children.	Title I, Part B, Sections 141-143 of the Elementary and Secondary Education Act (20 U.S.C. 2761-2763).	Parts 200 and 204.
84.012 Educationally Deprived Children—State administration.	Title I, Section 194 of the Elementary and Secondary Education Act (20 U.S.C. 2844).	Part 200.
84.013 Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Title I, Part B, Sections 151-153 of the Elementary and Secondary Education Act (20 U.S.C. 2781-2783).	Parts 200 and 203.
84.027 Assistance to States for Education of Handicapped Children.	Education of Handicapped Act Part B (except Section 619) (20 U.S.C. 1411-1418; 1420).	Part 300.
84.027 Incentive Grants (Handicapped Pre-school)	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	Part 300.
84.135 Higher Education Land-Grant Colleges and Universities.	Second Morrill Act of 1890 (7 U.S.C. 322 and 323)	Part 621.
84.039 Grants for Public Library Services	Title I, Library Services and Construction Act (20 U.S.C. 351-354).	Part 770.
84.035 Interlibrary Cooperation Services Programs	Title III, Library Services and Construction Act (20 U.S.C. 355e-355e-2).	Part 770.
84.046 Community Services and Continuing Education Program (except Special Programs).	Title I, Part A of the Higher Education Act (except Section 106) (20 U.S.C. 1001-1005; 1006-1011).	Part 610 (except Subpart C).
84.048 State Vocational Educational Program	Title I, Part A of the Vocational Education Act (20 U.S.C. 2301-2461.	Part 400.
84.049 Consumer and Homemaking Education		Part 400.
84.050 Program Improvement and Support Services.		Part 400.
84.052 Persons with Special Needs		Part 400.
84.053 State Advisory Councils		Part 400.
84.068 Indochinese Refugee Children Program	Title II of the Indochina Refugee Children Assistance Act (20 U.S.C. 1211b).	Part 537.
84.063 State Student Incentive Grant Program	Sections 415A-415E of the Higher Education Act (20 U.S.C. 1070c through 1070c-4).	Part 692.
84.071 State Post Secondary Education Commissions, Program-Intrastate Planning.	Title XII, Section 1203(a) of the Higher Education Act (20 U.S.C. 1142b(a)).	Part 605.
84.080 Gifted and Talented Children Program	Title IX, Section 901-908 of the Elementary and Secondary Education Act (except Section 905) (20 U.S.C. 3311-3314; 3316-3318).	Part 345.
84.081 Community Schools Program	Title VIII, Section 801-808 of the Elementary and Secondary Education Act (20 U.S.C. 33281-3288).	Part 440.
84.088 Instructional Materials and School Library Resources.	Title IV, Part B of the Elementary and Secondary Education Act (20 U.S.C. 3101-3102).	Part 774.
84.084 Improvement in Local Educational practices.	Title IV, Part C of the Elementary and Secondary Education Act (20 U.S.C. 1801-1832).	Part 774.
None. Architectural Barriers Removal	Title VII, Part E of the Higher Education Act (20 U.S.C. 1132d-11).	Part 617.
84.084 Guidance Counseling and Testing	Title IV, Part D of the Elementary and Secondary Education Act (20 U.S.C. 3121-3127).	Part 774.
84.096 Incentive Grants for State Student Financial Assistance Training program.	Section 493C of the Higher Education Act (20 U.S.C. 1088b-3).	Part 695.
84.098 Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d-2-1070d-3).	Part 606.
None. Career Education—State Allotment Program.	Career Education Incentive Act Program (except Sections 10, 11, 12) (20 U.S.C. 2601-2614).	Part 295.
84.067 State Basic Skills Improvement Program	Title II-B of the Elementary and Secondary Education Act (20 U.S.C. 2901-2904).	Part 765.

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(2) In any given year, to keep this list of programs current, the Secretary may update the list by adding or deleting programs upon publication of a notice in the FEDERAL REGISTER.

(d) In any given year, through publication of a notice in the FEDERAL REGISTER, the Secretary may announce funded programs (from the current updated list) for which an Insular Area may apply for a grant under the consolidated grant authority.

(48 U.S.C. 1469(a))

§ 76.126 Regulations that apply.

The following regulations apply to programs of assistance under a consolidated grant:

(a) The regulations for each program included in a consolidated grant for which funds are used and administered; and

(b) The regulations in this Part 76.

(48 U.S.C. 1469a)

§ 76.127 Purpose of a consolidated grant.

An Insular Area may apply for a consolidated grant for two or more of the educational programs listed in § 76.125. This procedure is intended to—

(a) Simplify for the Insular Area the application and reporting procedures that would otherwise be required for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the program purposes to be served by the programs consolidated under the grant.

(48 U.S.C. 1469a)

§ 76.128 What is a consolidated grant?

(a) A consolidated grant under this subpart is a grant to an Insular Area for any two or more of the programs listed in § 76.125. The amount of the consolidated grant is the sum of the allocations that would be received under each of the programs included in the consolidated grant if there had been no consolidation.

(b) *Example.* Assume that the Virgin Islands applies for a consolidated grant that includes the State programs under the Adult Education Act, the Career Education Incentive Act, and the Migrant and Handicapped programs under the Elementary and Secondary Education Act. If the allocation under the formula for each of these four programs is $150,000, the consolidated grant to the Virgin Islands would be $600,000.

(48 U.S.C. 1469a)

§ 76.129 How a consolidated grant works.

(a) (1) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jursidiction, one or more of the programs included in the grant.

(2) *Example.* Assume that Guam applies for a consolidated grant under the Library Services and Construction Act, The Career Education Incentive Act, and the Adult Education Act and that the sum of its allocations under these programs is $700,000. Guam may choose to allocate this $700,000 among all of the programs authorized under the three acts. Alternatively, it may choose to allocate the entire $700,000 to one specific program under the grant; for example, the Adult Education Act Program.

(b) (1) An Insular Area shall comply with requirements in the authorizing statute and implementing regulations for each program for which funds from the consolidated grant are used and administered.

(2) *Example.* Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Career Education Incentive Act. American Samoa need not submit to the Secretary a State plan that sets out policies and procedures to assure all students equal access to career education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(48 U.S.C. 1469a)

§ 76.130 How consolidated grants are made.

(a) *Grant awards.* The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of §§ 76.125 through

76.135 and each program under which the grant is to be used and administered.

(b) *Notice.* (1) The Secretary notifies each Insular Area of the programs in § 76.125 for which funds have been appropriated and can thus be included in the consolidated grant, and of its allotment under each of these programs for the particular fiscal year.

(2) The Secretary may decide that one or more programs cannot be included in the consolidated grant if it is determined that the Insular area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the program(s).

(48 U.S.C. 1469a)

§ 76.131 How to apply for a consolidated grant.

(a) An Insular Area that desires to apply for a grant consolidating any two or more of the programs in § 76.125 shall submit to the Secretary an application that—

(1) Contains the assurances in § 76.132; and

(2) Meets the application content requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of separate State plans or other similar documents required by this part or by the authorizing statutes for programs in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that—

(1) Contains a list of programs in § 76.125 to be included in the consolidated grant;

(2) Sets forth the program or programs in § 76.125, under which the consolidated grant funds will be used and administered;

(3) Describes the purposes and objectives for the program(s) for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carry over funds (authorized under GEPA section 412b) of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

(45 U.S.C. 1469a)

§ 76.132 Consolidated grant application assurances.

(a) An Insular Area shall include in the consolidated grant application the following assurances.

(b) The Insular Area shall assure the Secretary that it will—

(1) Follow policies and use administrative methods and practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the program(s) under which funds are to be used and administered;

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Make one annual report to the Secretary, as the Secretary may require, containing information covering the program(s) for which the grant is used and administered, including financial and program performance information required in 34 CFR Part 74, Subparts I and J;

(6) Provide that Federal funds received under the consolidated grant will be under control of—and that title to property acquired with these funds will be in—a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records and afford access to these records—as the Secretary finds necessary—in accordance with Section

437 of the General Education Provisions Act (20 U.S.C. 1232f);

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the law;

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the program(s), and other interested institutions, organizations, and individuals in planning and operating the program(s).

(c) These assurances remain in effect for the duration of the program or programs they cover.

(48 U.S.C. 1469a)

§ 76.133 Reallocation authority.

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the original allocation described in its application. However, the funds cannot be used for purposes that are not authorized under the program or programs in the consolidated grant under which funds are to be used and administered.

(b) *Notice.* If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under § 76.131.

(48 U.S.C. 1469a)

§ 76.134 Relationship between consolidated and non-consolidated grants.

(a) An Insular Area may request any number of programs in § 76.125 be included in its consolidated grant and apply separately for assistance under any other programs listed in § 76.125.

(b) Those programs that an Insular Area decides to exclude from consolidation and for which it must submit separate plans or applications, shall be carried out in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(48 U.S.C. 1469a)

§ 76.135 Matching.

(a) Appropriate statutory and regulatory requirements that govern matching of Federal funds apply to programs funded by a consolidated grant.

(b) The Secretary does not automatically waive matching requirements for programs included in a consolidated grant.

(c) A waiver may be granted if the statutory authority for the specific program in the consolidated grant expressly provides for a waiver of the matching requirement and statutory conditions for granting a waiver are met.

(48 U.S.C. 1469a)

AMENDMENTS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in—

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(20 U.S.C. 1221e-3(a)(1); 1231g(a))

§ 76.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 76.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(20 U.S.C. 1221e-3(a)(1))

§ 76.142 An amendment is approved on the same basis as the document being amended.

The Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

(20 U.S.C. 1221e-3(a)(1))

Subpart C—How a Grant Is Made to a State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

§ 76.201 A State plan must meet all statutory and regulatory requirements.

The Secretary approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(20 U.S.C. 1221e-3(a)(1))

§ 76.202 Opportunity for a hearing before a State plan is disapproved.

The Secretary may disapprove a State plan only after—

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(20 U.S.C. 1221e-3(a)(1))

§ 76.235 The notification of grant award.

(a) To make a grant to a State, the Secretary issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(20 U.S.C. 1221e-3(a)(1))

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

§ 76.260 Allotments are made under program statute.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute for the program.

(b) Any reallotment to other States will be made by the Secretary in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Secretary does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(20 U.S.C. 1221e-3(a)(1))

Subpart D—How To Apply to the State for a Subgrant

§ 76.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

§ 76.301 Local educational agency general application.

(a) A local educational agency that applies for subgrants under one or more programs listed in § 76.1 shall submit to the State a general application that contains the assurances contained in paragraph (c) of this section. That application covers the participation by that local educational agency in all of those programs.

(b) A general application submitted under this section remains in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application may not require the resubmission or amendment of the application unless required by a change in Federal or State law or bv other significant changes in the circumstances affecting an assurance in the application.

(c) The general application submitted by a local educational agency must include assurances—

(1) That the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) That the control of funds provided to the local educational agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property;

(3) That the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) That the local educational agency will—

(i) Make reports to the State agency or board and to the Secretary as may reasonably be necessary to enable the State agency or board and the Secretary to perform their duties;

(ii) Maintain records—including the records required under Section 437 of GEPA—and provide access to those records as the State agency or board or the Secretary decides are necessary to perform their duties;

(5) That the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) That in the case of any project involving construction—

(i) The project is not inconsistent with overall State plans for the construction of school facilities; and

(ii) In developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

(8) That the local educational agency has adopted effective procedures for—

(i) Acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations, and similar projects; and

(ii) Adopting, if appropriate, promising educational practices developed through those projects.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1232e)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of—

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(20 U.S.C. 1221e-3(a)(1))

§ 76.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 76.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall—

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(20 U.S.C. 1221e-3(a)(1))

§ 76.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(20 U.S.C. 1221e-3(a)(1); 1232e)

§ 76.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Subpart E—How a Subgrant Is Made to an Applicant

§ 76.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if—

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if—

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(20 U.S.C. 1221e-3(a)(1))

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs listed in § 76.1, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application:

(1) Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children.

(2) Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(b) *Other programs—hearings not required.* Under the other programs listed in § 76.1, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(i) Disapproval of or failure to approve the application or project in whole or in part.

(ii) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.* (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4) (i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6) (i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1221e-3(a)(1); 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

NONDISCRIMINATION

§ 76.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e-3(a)(1))

ALLOWABLE COSTS

§ 76.530 General cost principles.

Subpart Q of 34 CFR Part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 76.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e-3(a)(1))

§ 76.533 Acquistion of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(20 U.S.C. 1221e-3(a)(1))

INDIRECT COST RATES

§ 76.560 General indirect cost rates; exceptions.

(a) Appendices C-F to 34 CFR Part 74 include—

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 76.562 provides restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e-3(a)(1))

§ 76.561 Approval of indirect cost rates.

(a) The Secretary approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

§ 76.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 34 CFR 75.564-75.568, for each program listed in § 76.1 that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children.	Title I-A of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151-153 of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Sections 141-143 of the Elementary and Secondary Education Act.
State Basic Skills Improvement Program.	Title II of the Elementary and Secondary Education Act.
Financial Assistance for School Library Resources, Textbooks, and other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Strengthening Instruction on Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act.
State-operated Programs for Handicapped Children.	Sections 146-147 of the Elementary and Secondary Education Act.
Assistance to States for Education of Handicapped Children.	Part B of the Education of the Handicapped Act.
State Vocational Education Programs.	Part A of Title I of the Vocational Education Act.
Community Service and Continuing Education Programs	Title I of the Higher Education Act.

(20 U.S.C. 1221e-3(a)(1))

COORDINATION

§ 76.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(20 U.S.C. 1221e-3(a)(1); 2890)

§ 76.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e-3(a)(1))

EVALUATION

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(20 U.S.C. 1226c, 1231a, 3474)

[45 FR 86298, Dec. 30, 1980]

§ 76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Secretary may determine that the State or subgrantee meets the evaluation requirements of the program.

(20 U.S.C. 1226c; 1231a)

CONSTRUCTION

CROSS-REFERENCE. See 34 CFR Part 74, Subpart P—Procurement Standards.

§ 76.600 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600-75.615.

(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

(c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites).

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

§ 76.650 Private schools; purpose of §§ 76.651-76.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(20 U.S.C. 1221e-3(a)(1)).

NOTE: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

§ 76.651 Responsibility of a State and a subgrantee.

(a) (1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b) (1) A State shall ensure that each subgrantee complies with the requirements in §§76.651-76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(20 U.S.C. 1221e-3(a)(1))

§ 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of—

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(20 U.S.C. 1221e-3(a)(1))

§ 76.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(20 U.S.C. 1221e-3(a)(1))

§ 76.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same Benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who—

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(20 U.S.C. 1221e-3(a)(1))

§ 76.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on—

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(20 U.S.C. 1221e-3(a)(1))

§ 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(20 U.S.C. 1221e-3(a)(1))

§ 76.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(20 U.S.C. 1221e-3(a)(1))

§ 76.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(20 U.S.C. 1221e-3(a)(1))

§ 76.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities—

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(20 U.S.C. 1221e-3(a)(1))

§ 76.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(20 U.S.C. 1221e-3(a)(1))

§ 76.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school—

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.

(20 U.S.C. 1221e-3(a)(1))

§ 76.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(20 U.S.C. 1221e-3(a)(1))

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart C—Bonding and Insurance; and 34 CFR 74.144—Inventions and patents.

§ 76.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 46—Protection of Human Research Subjects.

§ 76.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89-544, as amended)

§ 76.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(20 U.S.C. 1221e-3(a)(1))

§ 76.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR Part 71 of this title.

(b) The Secretary may waive this requirement by publication of a notice in the FEDERAL REGISTER.

(20 U.S.C. 1221e-3(a)(1))

§ 76.690 Energy conservation awareness.

To the extent that it is consistent with the statute and regulations for any program, the subgrantee shall consider incorporating into its program a component on energy awareness. This component may include study of the problems, solutions, and alternatives relating to the Nation's energy crisis.

(42 U.S.C. 8373(b); E.O. No. 12185)

[45 FR 58013, Aug. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 76.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(20 U.S.C. 1221e-3(a)(1))

§ 76.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(20 U.S.C. 1221e-3(a)(1))

§ 76.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See 34 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 76.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Secretary in substantially approvable form.

(2) The date that the funds are first available for obligation by the Secretary.

(b) (1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Secretary.

(2) If a State plan is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Secretary informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(20 U.S.C. 1221e-3(a)(1))

§ 76.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 76.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 76.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR Part 74 (Appendices C-F).

(20 U.S.C. 1221e-3(a)(1))

§ 76.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(U.S.C. 1225(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with—

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1225(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the cost principles in appendices C-F to 45 CFR Part 74.	On the first day of the subgrant period.

(20 U.S.C. 1221e-3(a)(1))

Reports

Cross-reference. See 34 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR Part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(20 U.S.C., 1221e-3(a)(1))

§ 76.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(20 U.S.C. 1221e-3(a)(1))

Records

Cross-reference. See 34 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 76.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show—

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 76.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 76.734 Record retention period.

Unless a longer period is required under 34 CFR Part 74, a State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1232f(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Cross-reference. See 34 CFR 74.21 Length of retention period; and 74.22 Starting date of retention period.

PRIVACY

§ 76.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 34 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

§ 76.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Department is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teachers' manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Department, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1232h)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

USE OF FUNDS BY STATES AND SUBGRANTEES

§ 76.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if—

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

STATE ADMINISTRATIVE RESPONSIBILITIES

CROSS-REFERENCE. See 34 CFR Part 74, Subpart K—Grant and Subgrant Payment Requirements.

§ 76.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(20 U.S.C. 1221e-3(a)(1))

§ 76.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of—

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(20 U.S.C. 1222e-3(a)(1))

§ 76.772 Other responsibilities of the State.

(a) A State shall—

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

CROSS-REFERENCE. See § 76.1 Programs to which Part 76 applies.

(20 U.S.C. 1221e-3(a)(1))

COMPLAINT PROCEDURES OF THE STATE

§ 76.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for—

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

CROSS-REFERENCE. See § 76.1 Programs to which Part 76 applies.

(20 U.S.C. 1221e-3(a)(1))

§ 76.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(20 U.S.C. 1221e-3(a)(1))

§ 76.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(20 U.S.C. 1221e-3(a)(1))

§ 76.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 76.401(c)(2)-(7) apply to any request for a hearing under this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Subpart H—What Procedures Does the Secretary Use to Get Compliance?

CROSS-REFERENCE. See 34 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 76.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(43 Dec. Comp. Gen. 31(1963))

§ 76.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Secretary.

(b) The regulations for the Education Appeal Board are in 34 CFR Part 78.

(20 U.S.C. 1234)

§ 76.902 Judicial review.

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

(20 U.S.C. 1221e-3(a)(1))

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

§ 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in Part 74 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of

Part 74 that contains the definition is given in parentheses.

"Budget" (74.104)

"Contract" (includes definition of "Subcontract") (74.3)

"Equipment" (74.132)

"Federally recognized Indian tribal government" (74.3)

"Grant" (74.3)

"Grantee" (74.3)

"Local government" (74.3)

"Personal property" (74.132)

"Real property" (74.132)

"Recipient" (74.3)

"Subgrant" (74.3)

"Subgrantee" (74.3)

"Supplies" (74.132)

(c) Unless a statute or regulation provides otherwise, the following definitions also apply to the regulations in this title:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

"Applicant" means a party requesting a grant or subgrant under a program of the Department.

"Application" means a request for a grant or subgrant under a program of the Department.

"Award" means an amount of funds that the Department provides under a grant or contract.

"Budget period" means an interval of time into which a project period is divided for budgetary purposes.

"Department" means the U.S. Department of Education.

"Director of the Institute of Musuem Services" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

"Director of the National Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

"ED" means the U.S. Department of Education.

"EDGAR" means the Education Department General Administrative Regulations (34 CFR Parts 74, 75, 76, 77, and 78).

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

"Facilities" means one or more structures in one or more locations.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

"GEPA" means The General Education Provisions Act.

"Grant period" means the period for which funds have been awarded.

"Local educational agency" means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 34 CFR Parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

"Minor remodeling" means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, stuctural alterations to buildings, building maintenance, or repairs.

"Nonprofit," as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations

whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

"*Nonpublic,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"*Preschool*" means the educational level from a child's birth to the time at which the State provides elementary education.

"*Private,*" as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"*Project*" means the activity described in an application.

"*Project period*" means the period for which the appropriate official of the Department approves a project.

"*Public,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"*Secondary school*" means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

"*Secretary*" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"*Service function,*" with respect to a local educational agency—

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency—

(1) (i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

"*State*" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"*State educational agency*" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

"*Work of art*" means an item that is incorporated into facilities primarily because of its aesthetic value.

(Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)))

[45 FR 22529, Apr. 3, 1980, as amended at 45 FR 37442, June 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

PART 78—EDUCATION APPEAL BOARD

Subpart A—General

Sec.

78.1 Purpose.
78.2 Jurisdiction.
78.3 Definitions.
78.4 Board membership.
78.5 Panels.
78.6 Eligibility for review.
78.7 Exhaustion of remedies.

Subpart B—Final Audit Determination

WRITTEN NOTICE

78.11 Written notice of a final audit determination.
78.12 Review of the written notice.

APPLICATION FOR REVIEW

78.13 Filing an application for review.
78.14 Acceptance of the application for review.
78.15 Rejection of the application for review.

BURDEN OF PROOF

78.16 Burden of proof.

Subpart C—Withholding, Termination, Voiding, and Other Cost Determinations

WRITTEN NOTICE

Sec.
78.21 Written notice of an intent to withhold or terminate funds, void a grant, or of other cost determinations.

APPLICATION FOR A HEARING

78.22 Filing an application for a hearing.
78.23 Acceptance of the application.
78.24 Rejection of the application.

SUSPENSION OF PAYMENTS

78.25 Written notice of an intent to suspend funds.
78.26 Request to show cause.
78.27 Show cause hearing.
78.28 Decision.

Subpart D—Cease and Desist

WRITTEN NOTICE

78.31 Written notice of a cease and desist complaint.

HEARING

78.32 Right to appear at the cease and desist hearing.
78.33 Opportunity to show cause.

ORDER

78.34 Written report and order.

Subpart E—Practice and Procedure

GENERAL RULES

78.41 Applicability of this subpart.
78.42 Applicability of other laws.
78.43 Intervention.
78.44 Representation by counsel.
78.45 Filing of documents.
78.46 Availability of decisions.
78.47 Communications.
78.48 Transcripts.
78.49 Subpoenas.
78.50 Exchange of information.
78.51 Evidence.
78.52 Panel decisions.
78.53 Intermediate review.

PANEL PROCEEDINGS

78.61 Authority and responsibilities of Panels.
78.62 Conferences.

PRESENTATION OF CASE

78.71 Written submission normally required.
78.72 Notice of an oral argument or evidentiary hearing.
78.73 Conduct of a hearing.

Subpart F—Decisions and Orders

FINAL AUDIT DETERMINATIONS, WITHHOLDINGS, TERMINATIONS, AND OTHER DETERMINATIONS

Sec.
78.81 The Panel's decision.
78.82 Opportunity to comment on the Panel's decision.
78.83 The Secretary's decision.
78.84 Collection.

CEASE AND DESIST

78.85 The cease and desist report and order.
78.86 Enforcement.

AUTHORITY: Sec. 1232 of the Education Amendments of 1978, Pub. L. 95-561, 92 Stat. 2347-2351 (20 U.S.C. 1234).

SOURCE: 46 FR 27305, May 18, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 46 FR 27305, May 18, 1981, Part 78 was revised effective July 17, 1981. For the regulations remaining in effect until July 17, 1981, consult Title 45 Part 100d of the Code of Federal Regulations revised as of October 1, 1980.

Subpart A—General

§ 78.1 Purpose.

These regulations contain rules for the conduct of proceedings before the Education Appeal Board which was established in accordance with Section 451 of the General Education Provision Act.

(20 U.S.C. 1234 (a) and (e))

§ 78.2 Jurisdiction.

(a) The Board has jurisdiction to—

(1) Review final audit determinations concerning any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(2) Conduct withholding or termination hearings initiated by Department of Education (ED) officials in connection with any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(3) Conduct cease and desist proceedings initiated by authorized ED officials in connection with any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(4) Conduct hearings, in connection with an applicable program (See § 78.3

(*Definitions*) for the definition of an applicable program), which involve—

(i) A determination that a grant is void;

(ii) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant; or

(iii) A determination made by an authorized ED official with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefit, and other special rates negotiated with institutions of postsecondary education, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); and

(5) Conduct other proceedings as designated by the Secretary of Education (the Secretary) in the FEDERAL REGISTER.

(b) The Board also has jurisdiction under Section 182 of Title I of the Elementary and Secondary Education Act of 1965, as amended, to hear an appeal from each State educational agency (SEA) that has received written notice that the Secretary intends to disapprove the SEA's application for Title I funds. An appeal under section 182 shall be conducted as a withholding hearing.

(20 U.S.C. 1234(a), 2832(b))

§ 78.3 Definitions.

"Appellant" means an SEA or other recipient that requests—

(a) A review of a final audit determination;

(b) A witholding or termination hearing; or

(c) A hearing regarding a matter described in § 78.2(a)(4) (*Jurisdiction*).

"Applicable program" means any program administered by an authorized ED official except the following student financial assistance programs authorized by Title IV, and governed by regulations promulgated under Section 487, of the Higher Education Act of 1965, as amended:

(a) National Direct Student Loan Program.

(b) College Work-Study Program.

(c) Pell Grant Program, formerly known as the Basic Educational Opportunity Grant Program.

(d) Supplemental Educational Opportunity Grant Program.

(e) Guaranteed Student Loan Program.

(f) Parent Loans for Undergraduate Students Program.

(g) State Student Incentive Grant Program.

"Authorized ED official" means—

(a) The Secretary; or

(b) A person employed by ED who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of ED.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized ED official disallowing expenditures made by a recipient.

"Hearing" means any review proceeding conducted by the Board. A hearing may include a conference, a review of written submissions, an oral argument, or a full evidentiary hearing.

"Panel" means an Education Appeal Board Panel (See § 78.5, (*Panels*)).

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized ED official who issued—

(1) The final audit determination being appealed, the notice of an intent to withhold or terminate funds, or the cease and desist complaint; or

(2) Any other determination that is the subject of a proceeding before the Board (See § 78.2(a)(4) (*Jurisdiction*) for a list of these determinations.); and

(c) Any person, group, or agency that files an acceptable application to intervene (See § 78.43 (*Intervention*)).

"Recipient" means the named party or entity that initially receives Federal funds under an ED grant or cooperative agreement. For example, for a State-administered program conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended, the SEA is the recipient. This definition does not extend to procurement contracts.

"Suspension" means temporarily stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program pending the outcome of a withholding or termination hearing.

"Termination" means ending the payment of Federal funds to a recipient and ending the recipient's authority to charge costs to a program before the recipient's authority to charge costs to a program expires.

"Withholding" means stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, for the period of time the recipient is in violation of a requirement.

(20 U.S.C. 1234 (a) and (e))

§ 78.4 Board membership.

The Board consists of 15 to 30 members. Not more than one-third of the Board members may be employees of ED.

(20 U.S.C. 1234(c))

§ 78.5 Panels.

(a) (1) For each proceeding before the Board, the Board Chairperson selects a Panel, consisting of at least three members of the Board, and designates one of the Panel members as Panel Chairperson.

(2) The Board Chairperson may designate the entire Board to sit as a Panel for any case or class of cases.

(b) A majority of the members of a Panel must be members of the Board who are not full-time employees of the Federal Government.

(c) No Board member who is a party to, or has had any responsibility for the particular matter assigned to a Panel, may serve on that Panel.

(20 U.S.C. 1234 (a), (d), and (e))

§ 78.6 Eligibility for review.

(a) Review under these regulations is available to a recipient that receives a written notice from an authorized ED official of—

(1) A final audit determination;

(2) An intent to withhold or terminate funds;

(3) A cease and desist complaint;

(4) A determination that a grant is void;

(5) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant;

(6) A determination with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefits, and other special rates negotiated with institutions of postsecondary education, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); or

(7) Any other proceeding designated by the Secretary.

(b) Review under these regulations is also open to an SEA that has received written notice that the Secretary intends to disapprove the SEA's application for funds under Title I of the Elementary and Secondary Education Act of 1965, as amended. The review shall be conducted as a withholding hearing.

(20 U.S.C. 1234 (a) and (e), 20 U.S.C. 2832(b))

§ 78.7 Exhaustion of remedies.

(a) If a recipient receives a written notice referred to in § 78.6 (*Eligibility for review*) and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(b) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect (See Subpart F—Decisions and Orders).

(20 U.S.C. 1234 and 1234(d))

Subpart B—Final Audit Determination

WRITTEN NOTICE

§ 78.11 Written notice of a final audit determination.

(a) An authorized ED official may issue a written notice of a final audit determination to a recipient in connection with an applicable program (See § 78.3 for the definition of applicable program.)

(b) In the written notice, the authorized ED official—

(1) Lists the disallowed expenditures made by the recipient;

(2) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond—for example, by referring to the relevant parts of a separate document, such as an audit report; and

(3) Advises the recipient that it must repay the disallowed expenditures to ED or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234 (a) and (e), 1234a(a))

§ 78.12 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination after an application for review is received (See § 78.13 (*Filing an application for review*)) to insure that the written notice meets the requirements of § 78.11(b) (*Written notice of a final audit determination*).

(b) If the Board Chairperson decides that the written notice does not meet the requirements of § 78.11(b) (*Written notice of a final audit determination*), the Board Chairperson returns the determination to the official who issued it so that the determination may be properly modified.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application for review within 30 calendar days of the date it receives the modification.

(20 U.S.C. 1234 (a) and (e), 1234a(b))

APPLICATION FOR REVIEW

§ 78.13 Filing an application for review.

(a) An appellant seeking review of a final audit determination by the Board shall file a written application for review with the Board Chairperson.

(b) The appellant shall attach a copy of the written notice of a final audit determination to the application for review, and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(c) The appellant shall file the application for review no later than 30 calendar days after the date it receives the written notice of the final audit determination.

(20 U.S.C. 1234 (a) and (e), 1234a(b))

§ 78.14 Acceptance of the application for review.

(a) If the Board Chairperson decides that an application for review satisfies the requirements of § 78.13 (*Filing an application for review*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and the authorized ED official who issued the final audit determination.

(b) The Board Chairperson publishes a notice of acceptance of the application in the FEDERAL REGISTER prior to the scheduling of initial proceedings.

(c) If an acceptable application is filed, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of initial proceedings, and forwards to the Panel and parties an initial hearing record that includes—

(1) The final audit determination;

(2) The application for review; and

(3) Other relevant documents, such as audit reports.

(20 U.S.C. 1234 (a) and (e), 1234a(b))

§ 78.15 Rejection of the application for review.

(a) If the Board Chairperson determines that an application for review does not satisfy the requirements of § 78.13 (*Filing an application for review*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application for review is rejected twice, ED may take appropriate administrative action to collect the expenditures disallowed in the final audit determination.

(20 U.S.C. 1234 (a) and (e), 1234a(b))

BURDEN OF PROOF

§ 78.16 Burden of proof.

The appellant shall present its case first and has the burden of proving the allowability of the expenditures disallowed in the final audit determination.

(20 U.S.C. 1234 (a) and (e), 1234a(b))

Subpart C—Withholding, Termination, Voiding, and Other Cost Determinations

WRITTEN NOTICE

§ 78.21 Written notice of an intent to withhold or terminate funds, void a grant, or of other cost determinations.

(a) An authorized ED official may issue a written notice to a recipient under any applicable program (See § 78.3 (*Definitions*) for the definition of applicable program) of—

(1) An intent to withhold or terminate funds; or

(2) A determination, as described in paragraphs (a)(4) through (a)(6) of § 78.6 (*Eligibility for review*) that a grant is void, that a request to incur an expenditure during the term of a grant is denied, or a determination with respect to cost allocation plans, indirect cost rates, or other special rates.

(b) In the written notice, the authorized ED official—

(1) In the case of an intent to withhold or terminate funds, states the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) In the case of a determination that a grant is void, that an expenditure may not be incurred, or a determination with respect to cost allocation plans, indirect cost rates, or other special rates, states the reasons for the determination;

(3) Cites the requirement that is the basis for the alleged failure to comply or for the determination; and

(4) Advises the recipient that it may request a hearing before the Board.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234 (a) and (e), 1234b(a) and (b))

APPLICATION FOR A HEARING

§ 78.22 Filing an application for a hearing.

(a) An appellant seeking a withholding or termination hearing, or a hearing regarding a determination described in paragraphs (a)(4) through (a)(6) of § 78.6 (*Eligibility for review*), shall file a written application with the Board Chairperson not later than 30 calendar days after the date it receives the written notice.

(b) In the application for a hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(20 U.S.C. 1234 (a) and (e), 1234b(b))

§ 78.23 Acceptance of the application.

(a) If the appellant files an application that meets the requirements of § 78.22 (*Filing an application for a hearing*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and to the authorized ED official who issued the notice of the intent to withhold or terminate, or the determination that is the subject of the appeal.

(b) The Board Chairperson publishes a notice of acceptance of the application in the FEDERAL REGISTER. prior to the scheduling of initial proceedings.

(c) If the appellant files an acceptable application, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of a hearing, and forwards to the Panel and the parties an initial hearing record that includes—

(1) The written notice;

(2) The application for a hearing; and

(3) Other relevant documents.

(20 U.S.C. 1234 (a) and (e), 1234b(b))

§ 78.24 Rejection of the application.

(a) If the Board Chairperson determines that an application for a hearing does not satisfy the requirements of § 78.22 (*Filing an application for a hearing*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, ED takes appropriate administrative action to withhold or terminate funds, or to enforce the final determination in question.

(20 U.S.C. 1234 (a) and (e), 1234b(b))

SUSPENSION OF PAYMENTS

§ 78.25 Written notice of an intent to suspend funds.

(a) An authorized ED official may issue to the recipient a written notice of an intent to suspend funds during the course of the withholding or termination hearing.

(b) In the written notice, the authorized ED official—

(1) Indicates the reasons for the suspension; and

(2) Advises the recipient that the suspension becomes effective 10 calendar days after the date the recipient receives the written notice, unless within those 10 calendar days the recipient requests an opportunity to show cause why payments should not be suspended.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.26 Request to show cause.

A recipient seeking an opportunity to show cause why payments should not be suspended shall submit a written request for a show cause hearing to the authorized ED official who issued the written notice.

(20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.27 Show cause hearing.

(a) If a show cause hearing is requested, the authorized ED official—

(1) Notifies the recipient of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee does not have to be a member of the Board but may not be a party to, or have had any responsibility for, the matter before the Board.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for the suspension of payments;

(2) Possible factual errors in the written notice of the intent to withhold or terminate;

(3) The nature of the violation charged in the written notice of the intent to withhold or terminate; and

(4) Hardship resulting from the suspension.

(20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.28 Decision.

(a) The designee who conducts the show cause hearing—

(1) Decides whether there should be a suspension during the course of the withholding or termination hearing;

(2) Issues a written decision which includes a statement of findings;

(3) Submits the decision to the Board Chairperson; and

(4) Sends a copy of the decision to the recipient by certified mail with return receipt requested.

(b) The designee's decision is effective on receipt by the recipient and is not subject to review by the Secretary.

(c) The Board Chairperson retains the designee's decision as part of the record of the withholding or termination hearing.

(20 U.S.C. 1234 (a) and (e), 1234b(c))

Subpart D—Cease and Desist

WRITTEN NOTICE

§ 78.31 Written notice of a cease and desist complaint.

(a) An authorized ED official may issue a written notice of a cease and desist complaint to a recipient receiving funds under an applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.). The cease and desist proceeding may be used as an alternative to a withholding or termination hearing.

(b) In the written notice, the authorized ED official—

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234 (a) and (e), 1234c(a))

HEARING

§ 78.32 Right to appear at the cease and desist hearing.

The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(20 U.S.C. 1234 (a) and (e), 1234c(b))

§ 78.33 Opportunity to show cause.

At the hearing the recipient shall have the opportunity to present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(20 U.S.C. 1234 (a) and (e), 1234c(b))

ORDER

§ 78.34 Written report and order.

If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(a) Makes a written report stating its findings of fact; and

(b) Issues a cease and desist order (See § 78.85 (*The cease and desist report and order.*)).

(20 U.S.C. 1234 (a) and (e), 1234c(c))

Subpart E—Practice and Procedure

GENERAL RULES

§ 78.41 Applicability of this subpart.

This subpart applies only to proceedings before the Board.

(20 U.S.C. 1234(e))

§ 78.42 Applicability of other laws.

(a) Sections 554, 556, and 557 of the Administrative Procedure Act (5 U.S.C.) apply to proceedings before the Board with respect to—

(1) The receipt of oral or written testimony;

(2) Notice of the issues to be considered;

(3) The right to counsel;

(4) Intervention of third parties; and

(5) Transcripts of proceedings.

(b) Other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

(20 U.S.C. 1234(e))

§ 78.43 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c) (1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(20 U.S.C. 1234(e))

§ 78.44 Representation by counsel.

Parties may be represented by counsel.

(20 U.S.C. 1234(e))

§ 78.45 Filing of documents.

(a) An applicant shall file with the Board Chairperson one copy of an application for review or to intervene.

(b) Once a Panel has been assigned, parties shall—

(1) File with the Board Chairperson five copies of all written motions, briefs—including cited materials that are not readily available—and other documents; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) Parties have 25 calendar days from the date of receipt of any motion to file a response with the Board Chairperson, unless the Panel Chairperson grants an extension for a good reason.

(d) The date of filing is the date the document is postmarked or hand-delivered to the Office of the Board Chairperson. If a scheduled filing date occurs on a Saturday, Sunday, or Federal holiday, the next business day is the date of filing.

(20 U.S.C. 1234(e))

§ 78.46 Availability of decisions.

The Board Chairperson maintains the files of the Board. The decisions of the Board are available to the public on request and with payment of reproduction costs.

(20 U.S.C. 1234(e))

§ 78.47 Communications.

No party shall communicate with the Panel or Board Chairperson on matters under review, except minor procedural matters, unless all parties to the case are given—

(a) Timely and adequate notice of the communication; and

(b) Reasonable opportunity to respond.

(20 U.S.C. 1234(e))

§ 78.48 Transcripts.

(a) The Board Chairperson—

(1) Arranges for the preparation of a transcript of each hearing;

(2) Retains the original transcript as part of the record of the hearing; and

(3) Provides one copy of the transcript to each party and Panel member.

(b) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(20 U.S.C. 1234(e))

§ 78.49 Subpoenas.

(a) The Panel does not have authority to issue subpoenas.

(b) The Panel may ask a party to provide for oral or written examination one or more available witnesses who have knowledge about the matter under review.

(20 U.S.C. 1234(e))

§ 78.50 Exchange of information.

There is no discovery as conducted under the Federal Rules of Civil Procedure, but the parties are encouraged to exchange relevant documents and information.

(20 U.S.C. 1234(e))

§ 78.51 Evidence.

The Panel accepts any evidence that it finds is relevant and material to the proceedings. Parties may object to evidence they consider to be irrelevant, immaterial, or unduly repetitious.

(20 U.S.C. 1234(e))

§ 78.52 Panel decisions.

Decisions of the Panel are made by a majority of the Panel members.

(20 U.S.C. 1234(e))

§ 78.53 Intermediate review.

The parties may not file comments with the Secretary regarding matters under review on any rulings of a Panel until the Panel has reached its decision (See § 78.81 (*The Panel's decision*).).

(20 U.S.C. 1234(e))

PANEL PROCEEDINGS

§ 78.61 Authority and responsibilities of Panels.

(a) The Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of an appeal.

(2) The Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(3) The Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(4) The Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Panel.

(5) The Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(6) The Panel may rule on motions and other issues at any stage of the proceedings.

(7) Although hearings are open to the general public, the Panel may establish reasonable rules for public attendance and media coverage of the proceedings.

(8) The Panel may examine witnesses.

(9) The Panel may set reasonable time limits for submission of written documents.

(10) The Panel may end an appeal and issue a decision against a party if that party does not meet the time limits set by the Panel or otherwise delays the Panel.

(b) The Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(20 U.S.C. 1234(e))

§ 78.62 Conferences.

(a) The Board Chairperson may schedule a prehearing conference of the Panel members and parties.

(b) A Panel member or party may request a conference of the Panel members and parties except in the case of a show cause proceeding. The Panel Chairperson decides whether a conference is necessary.

(c) At a prehearing or other conference the Panel and the parties may consider subjects such as—

(1) Narrowing and clarifying issues;

(2) Assisting the parties in reaching agreements and stipulations;

(3) Clarifying the positions of the parties;

(4) Presenting the direct case of the parties in writing, in whole or in part, or conducting an oral argument or evidentiary hearing;

(5) Setting dates for the exchange of written documents, the receipt of comments from the parties on the need for an oral argument or evidentiary hearing, and further proceedings before the Panel; and

(6) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimates of time for each presentation.

(d) At a prehearing or other conference the parties shall be prepared to respond to the subjects listed in paragraph (c) of this section.

(e) Following a prehearing or other conference the Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(20 U.S.C. 1234(e))

PRESENTATION OF CASE

§ 78.71 Written submission normally required.

The parties shall present their positions through briefs and the submission of other documents but may request an oral argument or evidentiary hearing. The Panel shall determine whether an oral argument or evidentiary hearing is needed to clarify the position of the parties.

(20 U.S.C. 1234(e))

§ 78.72 Notice of an oral argument or evidentiary hearing.

If the Panel decides that an oral argument or evidentiary hearing is necessary, the Panel Chairperson sends written notice of this decision to all parties. The notice states the time and place of the proceeding and the issues to be considered. The notice may be published in the FEDERAL REGISTER upon the request of a party or Panel member.

(20 U.S.C. 1234(e))

§ 78.73 Conduct of a hearing.

A hearing is generally conducted by all the Panel members, but, if circumstances require, a hearing may be conducted by one or more Panel members. All the Panel members shall participate in the Panel's decision.

(20 U.S.C. 1234(e))

Subpart F—Decision and Orders

FINAL AUDIT DETERMINATIONS, WITHHOLDINGS, TERMINATIONS, AND OTHER DETERMINATIONS

§ 78.81 The Panel's decision.

The Panel issues a decision in the appeal from the final audit determination, or the intent to withhold or terminate funds, or other determinations that are the subject of the proceedings. The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d))

§ 78.82 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within seven days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d))

§ 78.83 The Secretary's decision.

(a) The Panel's decision becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision, unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the panel and to each of the parties.

(d) The final decision of the Secretary is the final decision of the Department.

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d), 1234d)

§ 78.84 Collection.

If the final decision of the Secretary sustains the final audit determination, the intent to withhold or terminate funds or other determination, ED takes immediate steps to collect the debt, withhold or terminate funds, or to effect the determination that was the subject of the Board proceedings.

(20 U.S.C. 1234 (a) and (e), 1234a(e), 1234b)

CEASE AND DESIST

§ 78.85 The cease and desist report and order.

(a) If the Panel issues a cease and desist report and order (described in § 78.34 (*Written report and order*)), the Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(b) The order becomes final 60 calendar days after the date the order is received by the recipent. The order is not subject to review by the Secretary.

(20 U.S.C. 1234 (a) and (e), 1234c(d), 1234d)

§ 78.86 Enforcement.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under the affected program, including funds payable for administrative costs, without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(20 U.S.C. 1234 (a) and (e), 1234c(e))

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Subpart A—General

Sec.
99.1 Applicability of part.
99.2 Purpose.
99.3 Definitions.
99.4 Student rights.
99.5 Formulation of institutional policy and procedures.
99.6 Annual notification of rights.
99.7 Limitations on waivers.
99.8 Fees.

Subpart B—Inspection and Review of Education Records

99.11 Right to inspect and review education records.
99.12 Limitations on right to inspect and review education records at the postsecondary level.
99.13 Limitation on destruction of education records.

Subpart C—Amendment of Education Records

99.20 Request to amend education records.
99.21 Right to a hearing.
99.22 Conduct of the hearing.

Subpart D—Disclosure of Personally Identifiable Information From Education Records

99.30 Prior consent for disclosure required.
99.31 Prior consent for disclosure not required.
99.32 Record of requests and disclosures required to be maintained.
99.33 Limitation on redisclosure.
99.34 Conditions for disclosure to officials of other schools and school systems.
99.35 Disclosure to certain Federal and State officials for Federal program purposes.
99.36 Conditions for disclosure in health and safety emergencies.
99.37 Conditions for disclosure of directory information.

Subpart E—Enforcement

99.60 Office and review board.
99.61 Conflict with State or local law.
99.62 Reports and records.
99.63 Complaint procedure.
99.64 Termination of funding.
99.65 Hearing procedures.
99.66 Hearing before Panel or a Hearing Officer.
99.67 Initial decision; final decision.

AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.

SOURCE: 45 FR 30911, May 9, 1980, unless otherwise noted.

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the Secretary of the U.S. Department of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section:

(1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.)

(20 U.S.C. 1232g)

[45 FR 30911, May 9, 1980, as amended at 45 FR 86296, Dec. 30, 1980]

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247 as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) Attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: The student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3) (i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65-99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(20 U.S.C. 1232g(e) and (f))

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(20 U.S.C. 1232g(e))

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if:

(1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f) (1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(20 U.S.C. 1232g(a)(1) (B) and (C))

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided,* That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(20 U.S.C. 1232g(a)(1))

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

(20 U.S.C. 1232g(a)(2))

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(20 U.S.C. 1232g(a)(2))

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(20 U.S.C. 1232g(a)(2))

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a) (1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

(20 U.S.C. 1232g(b)(1) and (b)(2)(A))

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary, or

(iii) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This paragraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this paragraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1))

§ 99.32 Record of requests and disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply:

(i) To requests by or disclosure to a parent of a student or an eligible student;

(ii) To requests by or disclosures to school officials under § 99.31(a)(1);

(iii) If there is written consent of a parent of a student or an eligible student, or

(iv) To requests for or disclosure of directory information under § 99.37.

(c) The record of requests and disclosures may be inspected;

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a) (1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided,* That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided,* That the disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation or enforcement of or compliance with Federal legal requirements. 20 U.S.C. 1232g(b)(3))

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(20 U.S.C. 1232g(b)(1)(I))

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65-99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g (f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b) (1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c) (1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64-99.67, inclusive.

(20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (a) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (b) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party:

(A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by paragraph (1)(ii) of this paragraph (b), provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

Subtitle B—Regulations of the Offices of the Department of Education

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Chapter I—Office for Civil Rights

Part		Page
100	Nondiscrimination under programs receiving Federal assistance through the Department of Education effectuation of Title VI of the Civil Rights Act of 1964	296
101	Practice and procedure for hearings under Part 100 of this title	318
104	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	328
106	Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance	361

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

100.1 Purpose.
100.2 Application of this regulation.
100.3 Discrimination prohibited.
100.4 Assurances required.
100.5 Illustrative application.
100.6 Compliance information.
100.7 Conduct of investigations.
100.8 Procedure for effecting compliance.
100.9 Hearings.
100.10 Decisions and notices.
100.11 Judicial review.
100.12 Effect on other regulations; forms and instructions.
100.13 Definitions.

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1, unless otherwise noted.

SOURCE: 45 FR 30918, May 9, 1980, unless otherwise noted.

§ 100.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.

(Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d)

§ 100.2 Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in § 100.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d-1, 2000d-3)

§ 100.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(A) Projects under the Public Works Acceleration Act, Pub. L. 87-658, 42 U.S.C. 2641-2643.

(B) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(C) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(D) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32-34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d-1, 2000d-3)

§ 100.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1. Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d-5)

§ 100.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In federally-affected area assistance (Pub. L. 815 and Pub. L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(d) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) Upon transfers of real or personal surplus property for educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(g) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(h) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 100.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in paragraph (i) of § 100.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(i) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1)

§ 100.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1)

§ 100.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 100.8.

(2) If an investigation does not warrant action pursuant to paragraph (1) of this paragraph (d) the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1)

§ 100.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 100.4.* If an applicant fails or refuses to furnish an assurance required under § 100.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d-5)

§ 100.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 100.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 100.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 100.10.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1)

§ 100.10 Decisions and notices.

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 100.9(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 100.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 100.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1)

§ 100.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

(Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d-2)

§ 100.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (2) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 34 CFR, Part 280.

(b) *Forms and instructions.* The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 100.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible official of this Department.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1)

§ 100.13 Definitions.

As used in this part—

(a) The term "Department" means the Department of Education.

(b) The term "Secretary" means the Secretary of Education.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under § 100.10(a)-(d).

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1)

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1—Assistance other than for State-Administered Continuing Programs

1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445).

2. Construction of facilities for institutions of higher education (20 U.S.C. 701-758).

3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631-647).

4. Construction of educational broadcast facilities (47 U.S.C. 390-399).

5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452).

6. Demonstration residential vocational education schools (20 U.S.C. 1321).

7. Research and related activities in education of handicapped children (20 U.S.C. 1441).

8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331-332(b)).

9. Research in teaching modern foreign languages (20 U.S.C. 512).

10. Training projects for manpower development and training (42 U.S.C. 2601, 2602, 2610a-2610c).

11. Research and training projects in Vocational Education (20 U.S.C. 1281(a), 1282-1284).

12. Allowances to institutions training NDEA graduate fellows (20 U.S.C. 461-465).

13. Grants for training in librarianship (20 U.S.C. 1031-1033).

14. Grants for training personnel for the education of handicapped children (20 U.S.C. 1431).

15. Allowances for institutions training teachers and related educational personnel in elementary and secondary education, or post-secondary vocational education (20 U.S.C. 1111-1118).

16. Recruitment, enrollment, training and assignment of Teacher Corps personnel (20 U.S.C. 1101-1107a).

17. Operation and maintenance of schools in Federally-affected and in major disaster areas (20 U.S.C. 236-241; 241-1; 242-244).

18. Grants or contracts for the operation of training institutes for elementary or secondary school personnel to deal with special educational problems occasioned by desegregation (42 U.S.C. 2000c-3).

19. Grants for in-service training of teachers and other schools personnel and employment of specialists in desegregation problems (42 U.S.C. 2000c-4).

20. Higher education students loan program (Title II, National Defense Education Act, 20 U.S.C. 421-429).

21. Educational Opportunity grants and assistance for State and private programs of low-interest insured loans and State loans to students in institutions of higher education (Title IV, Higher Education Act of 1965, 20 U.S.C. 1061-1087).

22. Grants and contracts for the conduct of Talent Search, Upward Bound, and Special Services Programs (20 U.S.C. 1068).

23. Land-grant college aid (7 U.S.C. 301-308; 321-326; 328-331).

24. Language and area centers (Title VI, National Defense Education Act, 20 U.S.C. 511).

25. American Printing House for the Blind (20 U.S.C. 101-105).

26. Future Farmers of America (36 U.S.C. 271-391) and similar programs.

27. Science clubs (Pub. L. 85-875, 20 U.S.C. 2, note).

28. Howard University (20 U.S.C. 121-129).

29. Gallaudet College (31 D.C. Code, Chapter 10).

30. Establishment and operation of a model secondary school for the deaf by Gallaudet College (31 D.C. Code 1051-1053; 80 Stat. 1027-1028).

31. Faculty development programs, workshops and institutes (20 U.S.C. 1131-1132).

32. National Technical Institute for the Deaf (20 U.S.C. 681-685).

33. Institutes and other programs for training educational personnel (Parts D, E, and F, Title V, Higher Education Act of 1965) (20 U.S.C. 1119-1119c-4).

34. Grants and contracts for research and demonstration projects in librarianship (20 U.S.C. 1034).

35. Acquisition of college library resources (20 U.S.C. 1021-1028).

36. Grants for strengthening developing institutions of higher education (20 U.S.C. 1051-1054); National Fellowships for teaching at developing institutions (20 U.S.C. 1055), and grants to retired professors to teach at developing institutions (20 U.S.C. 1056).

37. College Work-Study Program (42 U.S.C. 2751-2757).

38. Financial assistance for acquisition of higher education equipment, and minor remodeling (20 U.S.C. 1121-1129).

39. Grants for special experimental demonstration projects and teacher training in adult education (20 U.S.C. 1208).

40. Grant programs for advanced and undergraduate international studies (20 U.S.C. 1171-1176; 22 U.S.C. 2452(b)).

41. Experimental projects for developing State leadership or establishment of special services (20 U.S.C. 865).

42. Grants to and arrangements with State educational and other agencies to meet special educational needs of migratory children of migratory agricultural workers (20 U.S.C. 241e(c)).

43. Grants by the Secretary to local educational agencies for supplementary educational centers and services; guidance, counseling, and testing (20 U.S.C. 841-844; 844b).

44. Resource centers for improvement of education of handicapped children (20 U.S.C. 1421) and centers and services for deaf-blind children (20 U.S.C. 1422).

45. Recruitment of personnel and dissemination of information on education of handicapped (20 U.S.C. 1433).

46. Grants for research and demonstrations relating to physical education or recreation for handicapped children (20 U.S.C. 1442) and training of physical educators and recreation personnel (20 U.S.C. 1434).

47. Dropout prevention projects (20 U.S.C. 887).

48. Bilingual education programs (20 U.S.C. 880b-880b-6).

49. Grants to agencies and organizations for Cuban refugees (22 U.S.C. 2601(b)(4)).

50. Grants and contracts for special programs for children with specific learning disabilities including research and related activities, training and operating model centers (20 U.S.C. 1461).

51. Curriculum development in vocational and technical education (20 U.S.C. 1391).

52. Establishment, including construction, and operation of a National Center on Educational Media and Materials for the Handicapped (20 U.S.C. 1453).

53. Grants and contracts for the development and operation of experimental preschool and early education programs for handicapped (20 U.S.C. 1423).

54. Grants to public or private non-profit agencies to carry on the Follow Through Program in kindergarten and elementary schools (42 U.S.C. 2809 (a)(2)).

55. Grants for programs of cooperative education and grants and contracts for training and research in cooperative education (20 U.S.C. 1087a-1087c).

56. Grants and contracts to encourage the sharing of college facilities and resources (network for knowledge) (20 U.S.C. 1133-1133b).

57. Grants, contracts, and fellowships to improve programs preparing persons for public service and to attract students to public service (20 U.S.C. 1134-1134b).

58. Grants for the improvement of graduate programs (20 U.S.C. 1135-1135c).

59. Contracts for expanding and improving law school clinical experience programs (20 U.S.C. 1136-1136b).

60. Exemplary programs and projects in vocational education (20 U.S.C. 1301-1305).

61. Grants to reduce borrowing cost for construction of residential schools and dormitories (20 U.S.C. 1323).

62. Surplus real and related personal property disposal for educational purposes (40 U.S.C. 484(k)).

Part 2—Continuing Assistance to State Administered Programs

1. Grants to States for public library service and construction, interlibrary cooperation and specialized State library services for certain State institutions and the physically handicapped (20 U.S.C. 351-355).

2. Grants to States for strengthening instruction in academic subjects (20 U.S.C. 441-444).

3. Grants to States for vocational education (20 U.S.C. 1241-1264).

4. Arrangements with State education agencies for training under the Manpower

Development and Training Act (42 U.S.C. 2601-2602, 2610a).

5. Grants to States to assist in the elementary and secondary education of children of low-income families (20 U.S.C. 241a-242m).

6. Grants to States to provide for school library resources, textbooks and other instructional materials for pupils and teachers in elementary and secondary schools (20 U.S.C. 821-827).

7. Grants to States to strengthen State departments of education (20 U.S.C. 861-870).

8. Grants to States for community service programs (20 U.S.C. 1001-1011).

9. Grants to States for adult basic education and related research, teacher training and special projects (20 U.S.C. 1201-1211).

10. Grants to States educational agencies for supplementary educational centers and services, and guidance, counseling and testing (20 U.S.C. 841-847).

11. Grants to States for research and training in vocational education (20 U.S.C. 1281(b)).

12. Grants to States for exemplary programs and projects in vocational education (20 U.S.C. 1301-1305).

13. Grants to States for residential vocational education schools (20 U.S.C. 1321).

14. Grants to States for consumer and homemaking education (20 U.S.C. 1341).

15. Grants to States for cooperative vocational educational program (20 U.S.C. 1351-1355).

16. Grants to States for vocational work-study programs (20 U.S.C. 1371-1374).

17. Grants to States to attract and qualify teachers to meet critical teaching shortages (20 U.S.C. 1108-1110c).

18. Grants to States for education of handicapped children (20 U.S.C. 1411-1414).

19. Grants for administration of State plans and for comprehensive planning to determine construction needs of institutions of higher education (20 U.S.C. 715(b)).

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

I. SCOPE AND COVERAGE

A. APPLICATION OF GUIDELINES

These Guidelines apply to recipients of any Federal financial assistance from the Department of Education that offer or administer programs of vocational education or training. This includes State agency recipients.

B. DEFINITION OF RECIPIENT

The definition of "recipient" of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (34 CFR 100.13(i), 106.2(h), 104.3(f)).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such terms does not include any ultimate beneficiary [e.g., students] under any such program. (34 CFR 100.13(i)).

For the purposes of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended, directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof. (34 CFR 106.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (34 CFR 104.3(f)).

C. EXAMPLES OF RECIPIENTS COVERED BY THESE GUIDELINES

The following education agencies, when they provide vocational education, are examples of recipients covered by these Guidelines:

1. The board of education of a public school district and its administrative agency.

2. The administrative board of a specialized vocational high school serving students from more than one school district.

3. The administrative board of a technical or vocational school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school (including persons seeking a certificate or an associate degree through a vocational program offered by the school) and who are available for study in preparation for entering the labor market.

4. The administrative board of a postsecondary institution, such as a technical institute, skill center, junior college, community

college, or four year college that has a department or division that provides vocational education to students seeking immediate employment, a certificate or an associate degree.

5. The administrative board of a proprietary (private) vocational education school.

6. A State agency recipient itself operating a vocational education facility.

D. Examples of Schools to Which These Guidelines Apply

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.

2. A vocational education facility operated by a State agency.

3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

4. A comprehensive high school, offering the activities described above, that recieves students on a contract basis from other school districts for the purpose of providing vocational education.

5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students form one or more school districts for the purpose of providing vocational education.

6. A technical or vocational school that primarily provides vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree or certificate through a course of vocational instruction offered by the school.

7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment, an associate degree or a certificate through a course of vocational instruction offered by the school.

8. A proprietary school, licensed by the State that offers vocational education.

NOTE: Subsequent sections of these Guidelines may use the term *secondary vocational education center* in referring to the institutions described in paragraphs 3, 4 and 5 above or the term *postsecondary vocational education center* in referring to institutions described in paragraphs 6 and 7 above or the term *vocational education center* in referring to any or all institutions described above.

II. Responsibilities Assigned Only to State Agency Recipients

A. Responsibilities of All State Agency Recipients

State agency recipients, in addition to complying with all other provisions of the Guidelines relevant to them, may not require, approve of, or engage in any discrimination or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal or State funds to vocational education programs in the State;

2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;

3. Approval of action by local entities providing vocational education. (For example, a State agency must ensure compliance with Section IV of these Guidelines if and when it reviews a vocational education agency decision to create or change a geographic service area.);

4. Conducting its own programs. (For example, in employing its staff it may not discriminate on the basis of sex or handicap.)

B. State Agencies Performing Oversight Responsibilities

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.) This compliance program must include:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities;

2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;

3. Providing technical assistance upon request to subrecipients. This will include assisting subrecipients to identify unlawful discrimination and instructing them in rem-

edies for and prevention of such discrimination;

4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2, immediately above, to the Office for Civil Rights.

State agencies are not required to terminate or defer assistance to any subrecipient. Nor are they required to conduct hearings. The responsibilities of the Office for Civil Rights to collect and analyze data, to conduct compliance reviews, to investigate complaints and to provide technical assistance are not diminished or attenuated by the requirements of Section II of the Guidelines.

C. STATEMENT OF PROCEDURES AND PRACTICES

Within one year from the publication of these Guidelines in final form, each State agency recipient performing oversight responsibilities must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs A and B immediately above. The Department will review each submission and will promptly either approve it, or return it to State officials for revision.

III. DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

A. AGENCY RESPONSIBILITIES

Recipients that administer grants for vocational education must distribute Federal, State, or local vocational education funds so that no student or group of students is unlawfully denied an equal opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap.

B. DISTRIBUTION OF FUNDS

Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap [or an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability] if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups.

C. EXAMPLE OF A PATTERN SUGGESTING UNLAWFUL DISCRIMINATION

In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory.

D. DISTRIBUTION THROUGH COMPETITIVE GRANTS OR CONTRACTS

Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap of any or all of a recipient's students, except to compensate for past discrimination.

E. APPLICATION PROCESSES FOR COMPETITIVE OR DISCRETIONARY GRANTS

State agencies must disseminate information needed to satisfy the requirements of any application process for competitive or discretionary grants so that all recipients, including those having a high percentage of minority or handicapped students, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one recipient or class of recipients.

F. ALTERATION OF FUND DISTRIBUTION TO PROVIDE EQUAL OPPORTUNITY

If the Office for Civil Rights finds that a recipient's system for distributing vocational education funds unlawfully discriminates on the basis of race, color, national origin, sex, or handicap, it will require the recipient to adopt an alternative nondiscriminatory method of distribution. The Office for Civil Rights may also require the recipient to compensate for the effects of its past unlawful discrimination in the distribution of funds.

IV. ACCESS AND ADMISSION OF STUDENTS TO VOCATIONAL EDUCATION PROGRAMS

A. RECIPIENT RESPONSIBILITIES

Criteria controlling student eligibility for admission to vocational education schools, facilities and programs may not unlawfully discriminate on the basis of race, color, national origin, sex, or handicap. A recipient may not develop, impose, maintain, approve, or implement such discriminatory admissions criteria.

B. SITE SELECTION FOR VOCATIONAL SCHOOLS

State and local recipients may not select or approve a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, or national origin. Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

C. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS BASED ON RESIDENCE

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area or attendance zone, (hereinafter "service area"), that unlawfully exclude students on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of the following circumstances indicates that the boundaries of a given service area are unlawfully constituted:

1. A school system or service area contiguous to the given service area, contains minority or nonminority students in substantially greater proportion than the given service area;

2. A substantial number of minority students who reside outside the given vocational education center service area, and who are not eligible for the center reside, nonetheless, as close to the center as a substantial number of non-minority students who are eligible for the center;.

3. The over-all vocational education program of the given service area in comparison to the over-all vocational education program of a contiguous school system or service area enrolling a substantially greater proportion of minority students:

(a) Provides its students with a broader range of curricular offerings, facilities and equipment; or (b) provides its graduates greater opportunity for employment in jobs:

(i) For which there is a demonstrated need in the community or region; (ii) that pay higher entry level salaries or wages; or (iii) that are generally acknowledged to offer greater prestige or status.

D. ADDITIONS AND RENOVATIONS TO EXISTING VOCATIONAL EDUCATION FACILITIES

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

E. REMEDIES FOR VIOLATIONS OF SITE SELECTION AND GEOGRAPHIC SERVICE AREA REQUIREMENTS

If the conditions specified in paragraphs IV, A, B, C, or D, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the discrimination. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) Redrawing of the boundaries of the vocational education center's service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) provision of transportation to students residing in areas unlawfully excluded; (3) provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; (4) reassignment of students; and (5) construction of new facilities or expansion of existing facilities.

F. ELIGIBILITY FOR ADMISSION TO SECONDARY VOCATIONAL EDUCATION CENTERS BASED ON NUMERICAL LIMITS IMPOSED ON SENDING SCHOOLS

A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

G. REMEDIES FOR VIOLATION OF ELIGIBILITY BASED ON NUMERICAL LIMITS REQUIREMENTS

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap.

H. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS, BRANCHES OR ANNEXES BASED UPON STUDENT OPTION

A vocational education center, branch or annex, open to all students in a service area and predominantly enrolling minority students or students of one race, national origin or sex, will be presumed unlawfully segregated if:

(1) It was established by a recipient for members of one race, national origin or sex; or (2) it has since its construction been attended primarily by members of one race, national origin or sex; or (3) most of its program offerings have traditionally been selected predominantly by members of one race, national origin or sex.

I. REMEDIES FOR FACILITY SEGREGATION UNDER STUDENT OPTION PLANS

If the conditions specified in paragraph IV-H are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the segregation. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) Elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation or "clustering" of programs or courses; (3) adding programs and courses that traditionally have been identified as intended for members of a particular race, national origin or sex to schools that have traditionally served members of the other sex or traditionally served persons of a different race or national origin; (4) merger of programs into one facility through school closings or new construction; (5) intensive outreach recruitment and counseling; (6) providing free transportation to students whose enrollment would promote desegregation.

J. [RESERVED]

K. ELIGIBILITY BASED ON EVALUATION OF EACH APPLICANT UNDER ADMISSIONS CRITERIA

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).

An introductory, preliminary, or exploratory course may not be established as a prerequisite for admission to a program unless the course has been and is available without regard to race, color, national origin, sex, and handicap. However, a course that was formerly only available on a discriminatory basis may be made a prerequisite for admission to a program if the recipient can demonstrate that:

(a) The course is essential to participation in the program; *and* (b) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

L. ELIGIBILITY OF NATIONAL ORIGIN MINORITY PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction.

Acceptable methods of identification include: (1) Identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

M. REMEDIAL ACTION IN BEHALF OF PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs solely on the basis of their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

N. EQUAL ACCESS FOR HANDICAPPED STUDENTS

Recipients may not deny handicapped students access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must:

(1) Modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary handicapped students; (5) provide related aids or services that assure secondary students an appropriate education.

Academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual handicapped students.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for non-handicapped persons.

O. PUBLIC NOTIFICATION

Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of non-discrimination may be made, for example, in local newspapers, recipient publications and/or other media that reach the general public, program beneficiaries, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. A brief summary of program offerings and admission criteria should be included in the announcement; also the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activity.

If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its language and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

V. COUNSELING AND PREVOCATIONAL PROGRAMS

A. RECIPIENT RESPONSIBILITIES

Recipients must insure that their counseling materials and activities (including student program selection and career/employment selection), promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

B. COUNSELING AND PROSPECTS FOR SUCCESS

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities.

C. STUDENT RECRUITMENT ACTIVITIES

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

D. COUNSELING OF STUDENTS WITH LIMITED ENGLISH-SPEAKING ABILITY OR HEARING IMPAIRMENTS

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

E. PROMOTIONAL ACTIVITIES

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes or limitations based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Materials that are part of promotional efforts may not create or perpetuate stereo-

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types through text or illustration. To the extent possible they should portray males or females, minorities or handicapped persons in programs and occupations in which these groups traditionally have not been represented. If a recipient's service area contains a community of national origin minority persons with limited English language skills, promotional literature must be distributed to that community in its language.

VI. EQUAL OPPORTUNITY IN THE VOCATIONAL EDUCATION INSTRUCTIONAL SETTING

A. ACCOMMODATIONS FOR HANDICAPPED STUDENTS

Recipients must place secondary level handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a program only after the recipient satisfies the provisions of the Department's Regulation, 34 CFR, Part 104, relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.

B. STUDENT FINANCIAL ASSISTANCE

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. If a recipient's service area contains a community of national origin minority persons with limited English language skills, such information must be disseminated to that community in its language.

C. HOUSING IN RESIDENTIAL POSTSECONDARY VOCATIONAL EDUCATION CENTERS

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. COMPARABLE FACILITIES

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by alternating use of the same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. WORK STUDY, COOPERATIVE VOCATIONAL EDUCATION, JOB PLACEMENT, AND APPRENTICE TRAINING

A. RESPONSIBILITIES IN COOPERATIVE VOCATIONAL EDUCATION PROGRAMS, WORK-STUDY PROGRAMS, AND JOB PLACEMENT PROGRAMS

A recipient must insure that: (a) It does not discriminate against its students on the basis of race, color, national origin, sex, or handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay.

If a recipient enters into a written agreement for the referral or assignment of students to an employer, the agreement must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, or handicap.

Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings if the decision resolves the issue of whether the employer has engaged in unlawful discrimination.

B. APPRENTICE TRAINING PROGRAMS

A recipient may not enter into any agreement for the provision or support of apprentice training for students or union members with any labor union or other sponsor that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union or other sponsor providing for apprentice training, the agreement must contain an assurance from the union or other sponsor:

(1) That it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprentice training will be offered and conducted for its membership free of such discrimination.

VIII. EMPLOYMENT OF FACULTY AND STAFF

A. EMPLOYMENT GENERALLY

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin if such discrimination tends to result in segregation, exclusion or other discrimination against students.

B. RECRUITMENT

Recipients may not limit their recruitment for employees to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. PATTERNS OF DISCRIMINATION

Whenever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not in fact available in the relevant labor market.

D. SALARY POLICIES

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex or handicap.

E. EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED APPLICANTS

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. THE EFFECTS OF PAST DISCRIMINATION

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. STAFF OF STATE ADVISORY COUNCILS OF VOCATIONAL EDUCATION

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. EMPLOYMENT AT STATE OPERATED VOCATIONAL EDUCATION CENTERS THROUGH STATE CIVIL-SERVICE AUTHORITIES

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must insure that recruitment and hiring of staff for the vocational education center is conducted in accordance with the requirements of these Guidelines.

IX. PROPRIETARY VOCATIONAL EDUCATION SCHOOLS

A. RECIPIENT RESPONSIBILITIES

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. ENFORCEMENT AUTHORITY

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Education. However, authority to enforce Title VI of the Civil rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Administration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

[45 FR 30918, May 9, 1980; 45 FR 37426, June 3, 1980]

PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE

Subpart A—General Information

Sec.
101.1 Scope of rules.
101.2 Records to be public.
101.3 Use of gender and number.
101.4 Suspension of rules.

Subpart B—Appearance and Practice

101.11 Appearance.
101.12 Authority for representation.
101.13 Exclusion from hearing for misconduct.

Subpart C—Parties

101.21 Parties.
101.22 Amici curiae.
101.23 Complainants not parties.

Subpart D—Form, Execution, Service and Filing of Documents

101.31 Form of documents to be filed.
101.32 Signature of documents.
101.33 Filing and service.
101.34 Service—how made.
101.35 Date of service.
101.36 Certificate of service.

Subpart E—Time

101.41 Computation.
101.42 Extension of time or postponement.
101.43 Reduction of time to file documents.

Subpart F—Proceedings Prior to Hearing

101.51 Notice of hearing or opportunity for hearing.
101.52 Answer to notice.
101.53 Amendment of notice or answer.
101.54 Request for hearing.
101.55 Consolidation.
101.56 Motions.
101.57 Responses to motions and petitions.
Sec.
101.58 Disposition of motions and petitions.

Subpart G—Responsibilities and Duties of Presiding Officer

101.61 Who presides.
101.62 Designation of hearing examiner.
101.63 Authority of presiding officer.

Subpart H—Hearing Procedures

101.71 Statement of position and trial briefs.
101.72 Evidentiary purpose.
101.73 Testimony.
101.74 Exhibits.
101.75 Affidavits.
101.76 Depositions.
101.77 Admissions as to facts and documents.
101.78 Evidence.
101.79 Cross-examination.
101.80 Unsponsored written material.
101.81 Objections.
101.82 Exceptions to rulings of presiding officer unnecessary.
101.83 Official notice.
101.84 Public document items.
101.85 Offer of proof.
101.86 Appeals from ruling of presiding officer.

Subpart I—The Record

101.91 Official transcript.
101.92 Record for decision.

Subpart J—Posthearing Procedures, Decisions

101.101 Posthearing briefs: proposed findings and conclusions.
101.102 Decisions following hearing.
101.103 Exceptions to initial or recommended decisions.
101.104 Final decisions.
101.105 Oral argument to the reviewing authority.
101.106 Review by the Secretary.
101.107 Service on amici curiae.

Subpart K—Judicial Standards of Practice

101.111 Conduct.
101.112 Improper conduct.
101.113 Ex parte communications.
101.114 Expeditious treatment.
101.115 Matters not prohibited.
101.116 Filing of ex parte communications.

Subpart L—Posttermination Proceedings

101.121 Posttermination proceedings.

Subpart M—Definitions

101.131 Definitions.

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Subpart A—General Information

§ 101.1 Scope of rules.

The rules of procedure in this part supplement §§ 100.9 and 100.10 of this subtitle and govern the practice for hearings, decisions, and administrative review conducted by the Department of Education, pursuant to Title VI of the Civil Rights Act of 1964 (section 602, 78 Stat. 252) and Part 100 of this subtitle.

§ 101.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts, of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

§ 101.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 101.4 Suspension of rules.

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

Subpart B—Appearance and Practice

§ 101.11 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

§ 101.12 Authority for representation.

Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.

§ 101.13 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

Subpart C—Parties

§ 101.21 Parties.

(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him a respondent.

(b) The Assistant Secretary for Civil Rights of the Department of Education, shall be deemed a party to all proceedings.

§ 101.22 Amici curiae.

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

§ 101.23 Complainants not parties.

A person submitting a complaint pursuant to § 100.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.

Subpart D—Form, Execution, Service and Filing of Documents

§ 101.31 Form of documents to be filed.

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

§ 101.32 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

§ 101.33 Filing and service.

All notices by a Department official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only on exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 101.107.

§ 101.34 Service—how made.

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be air mailed if the addressee is more than 300 miles distant.

§ 101.35 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

§ 101.36 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

Subpart E—Time

§ 101.41 Computation.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

§ 101.42 Extension of time or postponement.

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted, if made promptly.

§ 101.43 Reduction of time to file documents.

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 80 of this title.

Subpart F—Proceedings Prior to Hearing

§ 101.51 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to § 100.9 of this title.

§ 101.52 Answer to notice.

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

§ 101.53 Amendment of notice or answer.

The Assistant Secretary for Civil Rights may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

§ 101.54 Request for hearing.

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.

§ 101.55 Consolidation.

The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

§ 101.56 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.

§ 101.57 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

§ 101.58 Disposition of motions and petitions.

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held or written motions or petitions unless the presiding officer in his discretion expressly so orders.

Subpart G—Responsibilities and Duties of Presiding Officer

§ 101.61 Who presides.

A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

§ 101.62 Designation of hearing examiner.

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 101.63 Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).

Subpart H—Hearing Procedures

§ 101.71 Statement of position and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

§ 101.72 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part 100 of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 101.101. Thereafter the proceedings shall go to conclusion in accordance with Subpart J of this part. The presiding officer may allow an appeal from such order in accordance with § 101.86.

§ 101.73 Testimony.

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 101.75 and 101.76, witnesses shall be available at the hearing for cross-examination.

§ 101.74 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 101.75 Affidavits.

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 101.76 Depositions.

Upon such terms as may be just, for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

§ 101.77 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute and admission by him for any other purpose or be used against him in any other proceeding or action.

§ 101.78 Evidence.

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

§ 101.79 Cross-examination.

A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

§ 101.80 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 101.81 Objections.

Objections to evidence shall be timely and briefly state the ground relied upon.

§ 101.82 Exceptions to rulings of presiding officer unnecessary.

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

§ 101.83 Official notice.

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 101.84 Public document items.

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

§ 101.85 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 101.86 Appeals from ruling of presiding officer.

Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decisions, the reviewing authority may direct the presiding officer to certify any question or the entire record to it for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

Subpart I—The Record

§ 101.91 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 101.92 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart J—Posthearing Procedures, Decisions

§ 101.101 Posthearing briefs: proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

§ 101.102 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including his recommended findings and proposed decision, to the responsible Department official; or if so authorized he shall make an initial decision. A copy of the

80-112 O—82——22

recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

§ 101.103 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

§ 101.104 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 101.103, such decision shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(b) Where the hearing is conducted by a hearing examiner who makes a recommended decision, or upon the filing of exceptions to a hearing examiner's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue its own decision thereon, which shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

§ 101.105 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Department hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

§ 101.106 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant to § 101.104(a) or within 20 days of the mailing of a final decision referred to in § 101.104(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

§ 101.107 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in this subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 101.71 shall be served on amici.

Subpart K—Judicial Standards of Practice

§ 101.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to restrain his client from improprieties in connection with a proceeding.

§ 101.112 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgement of the reviewing authority by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgement of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.

§ 101.113 Ex parte communications.

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

§ 101.114 Expeditious treatment.

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

§ 101.115 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 101.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of Part 100 of this title are not prohibited.

§ 101.116 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

Subpart L—Posttermination Proceedings

§ 101.121 Posttermination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 101.131 Definitions.

The definitions contained in § 100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term "reviewing authority" as used herein includes the Secretary of Education, with respect to action by that official under § 101.106.

Transition provisions: (a) The amendments herein shall become effective upon publication in the FEDERAL REGISTER.

(b) These rules shall apply to any proceeding or part thereof to which Part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 34 CFR, Part 100 (Title VI regulations of the Department of Education) as that part existed prior to the amendments published in the FEDERAL REGISTER on Oct. 19, 1967 (effective on that date), the rules in this Part 101 shall apply as if those amendments were not in effect.

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

Sec.
104.1 Purpose.
104.2 Application.
104.3 Definitions.
104.4 Discrimination prohibited.
104.5 Assurances required.
104.6 Remedial action, voluntary action, and self-evaluation.
104.7 Designation of responsible employee and adoption of grievance procedures.
104.8 Notice.
104.9 Administrative requirements for small recipients.
104.10 Effect of state or local law or other requirements and effect of employment opportunities.

Subpart B—Employment Practices

104.11 Discrimination prohibited.
104.12 Reasonable accommodation.
104.13 Employment criteria.
104.14 Preemployment inquiries.

Subpart C—Program Accessibility

Sec.
104.21 Discrimination prohibited.
104.22 Existing facilities.
104.23 New construction.

Subpart D—Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.
104.32 Location and notification.
104.33 Free appropriate public education.
104.34 Educational setting.
104.35 Evaluation and placement.
104.36 Procedural safeguards.
104.37 Nonacademic services.
104.38 Preschool and adult education programs.
104.39 Private education programs.

Subpart E—Postsecondary Education

104.41 Application of this subpart.
104.42 Admissions and recruitment.
104.43 Treatment of students; general.
104.44 Academic adjustments.
104.45 Housing.
104.46 Financial and employment assistance to students.
104.47 Nonacademic services.

Subpart F—Health, Welfare, and Social Services

104.51 Application of this subpart.
104.52 Health, welfare, and other social services.
104.53 Drug and alcohol addicts.
104.54 Education of institutionalized persons.

Subpart G—Procedures

104.61 Procedures.

Appendix A—Analysis of Final Regulation
Appendix B—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat. 795.

Source: 45 FR 30936, May 9, 1980, unless otherwise noted.

Note: For an interpretation document affecting Part 104, see 46 FR 4912, Jan. 19, 1981. The effective date of the interpretation was deferred to March 30, 1981, at 46 FR 12495, Feb. 17, 1981. The effective date was again deferred to May 10, 1981, at 46 FR 18975, Mar. 27, 1981, and deferred until further notice at 46 FR 25614, May 8, 1981.

Subpart A—General Provisions

§ 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

§ 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activitiy which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis cf handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the

program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 104.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absense, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 104.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the ac-

cessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usuable by handicapped persons.

§ 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)), which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided. Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1975. Incorporated documents are on file at the Office of the Federal Register. Copies of the standards are obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980]

Subpart D—Preschool, Elementary, and Secondary Education

§ 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is belived to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 104.35 and 104.36 Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

§ 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 104.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 104.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 104.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 104.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not disacriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, and Social Services

§ 104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in § 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

Subpart G—Procedures

§ 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 100.6-100.10 and Part 101 of this title.

APPENDIX A—ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

*Definitions—*1 *"Recipient".* Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of § 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *"Federal financial assistance"*. In § 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

3. *"Handicapped person"*. Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. *Drug addicts and alcoholics.* As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *"Qualified handicapped person."* Paragraph (k) of § 104.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of § 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of § 104.6(a)(3), however, persons beyond the age limits prescribed in § 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

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In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to § 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§ 104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret § 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of § 104.23.

7. *Assurances of compliance.* Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick*, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols*, *supra*.

9. *Remedial action.* Where there has been a finding of discrimination, § 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In § 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of § 104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 104.8 (formerly § 84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In § 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of § 104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, § 104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Section 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new § 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs than do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (34 CFR, Part 106) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requries certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of § 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of § 104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in § 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. *Tests and selection criteria.* Revised § 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, § 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries.* Section 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of § 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under § 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with § 104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with § 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised § 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new § 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words "if construction has commenced" will be considered to mean "if

groundbreaking has taken place." Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 104.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of §§104.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility. Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 104.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 104.32 and 104.33 apply only to public programs and § 104.39 applies only to private programs; §§ 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Under § 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new § 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of § 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in § 104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under § 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by § 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§ 104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, § 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§ 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of § 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, § 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under § 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of § 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under § 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of § 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

SUBPART E—POSTSECONDARY EDUCATION

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in § 104.42(a), the regulation delineates, in § 104.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 104.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that § 104.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessibile so long as a sufficient number of facilities are available to handicapped persons.

Revised § 104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of § 104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed § 104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of § 104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It shoud be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (§ 104.42(b)) and will be similarly interpreted.

Under § 104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§ 106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with § 104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of § 104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on § 104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under § 104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as § 104.43(b) to include the "as a whole" concept and will be interpreted in the same manner as § 104.43(b).

35. *Nonacademic services.* Section 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does § 104.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

SUBPART F—HEALTH, WELFARE, AND SOCIAL SERVICES

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, § 104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of section 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 104.4(b)(ii) and 104.43(b). New paragaph (a)(3) requires the provision of effective benefits or services, as defined in § 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tacticle devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. *Treatment of Drug Addicts and Alcoholics.* Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

SUBPART G—PROCEDURES

In § 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedureal regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE: For the text of these guidelines, see 34 CFR, Part 100, Appendix B.

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

106.1 Purpose and effective date.
106.2 Definitions.
106.3 Remedial and affirmative action and self-evaluation.
106.4 Assurance required.
106.5 Transfers of property.
106.6 Effect of other requirements.
106.7 Effect of employment opportunities.
106.8 Designation of responsible employee and adoption of grievance procedures.
106.9 Dissemination of policy.

Subpart B—Coverage

106.11 Application.
106.12 Educational institutions controlled by religious organizations.
106.13 Military and merchant marine educational institutions.
106.14 Membership practices of certain organizations.
106.15 Admissions.
106.16 Educational institutions eligible to submit transition plans.

Sec.
106.17 Transition plans.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

106.21 Admission.
106.22 Preference in admission.
106.23 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

106.31 Education programs and activities.
106.32 Housing.
106.33 Comparable facilities.
106.34 Access to course offerings.
106.35 Access to schools operated by L.E.A.s.
106.36 Counseling and use of appraisal and counseling materials.
106.37 Financial assistance.
106.38 Employment assistance to students.
106.39 Health and insurance benefits and services.
106.40 Marital or parental status.
106.41 Athletics.
106.42 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

106.51 Employment.
106.52 Employment criteria.
106.53 Recruitment.
106.54 Compensation.
106.55 Job classification and structure.
106.56 Fringe benefits.
106.57 Marital or parental status.
106.58 Effect of State or local law or other requirements.
106.59 Advertising.
106.60 Pre-employment inquiries.
106.61 Sex as bona-fide occupational qualification.

Subpart F—Procedures [Interim]

106.71 Procedures.

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

SOURCE: 45 FR 30955, May 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

§ 106.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Education.

(c) *"Secretary"* means the Secretary of Education.

(d) *"Assistant Secretary"* means the Assistant Secretary for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980]

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c) (ii) of this section and of any remedial steps taken pursuant to paragraph (c) (iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980]

§ 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this Part 106 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 86298, Dec. 30, 1980]

§ 106.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 106.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 106.16 and 106.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980]

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23,

1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admision, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 106.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution: *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein: *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each

sex to the extent consistent with this paragraph and § 106.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the

student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR, Part 101.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION [1]

A

Access to Course Offerings [43, 55, 56, 57, 58]; 106.34
Access to Schools Operated by LEA's, [44]; 106.35
Admissions, [5, 6, 30]; 106.15, 106.21
  Affirmative and remedial action, [16, 17, 24]; 106.3(a); (b)
  Administratively separate units, [30]; 106.15(b) 106.2(o)
  Educational Institutions, [30], 106.15(d), 106.2(n)
  General, 106.21(a), 106.2(p),
  Prohibitions relating to marital and parental status, [32, 36]; 106.21(c)
  Professional schools, [30], 106.2(m)
  Public institutions of undergraduate higher education, 106.15(e)
  Recruitment, [34, 35]; 106.23
  Specific prohibitions, 106.21(b)
  Tests, [31]; 106.21(b) (2)
  Preference in admission, [35]; 106.22
Advertising, 106.59
Affirmative Action, see "Remedial and Affirmative Actions"
Assistance to "outside" discriminatory organizations, [40, 53]; 106.31(b) (7), (c)
Assurances, [18]; 106.4
  Duration of obligation, 106.4(b)
  Form, 106.4(c)
Athletics, [69 to 78]; 106.41
  Adjustment period, [78]; 106.41(d)
  Contact sport defined, 106.41(d)
  Equal opportunity, [76, 77]; 106.41(d)
  Determining factors, 106.41(c) (i) to (x)
  Equipment, 106.41(c)
  Expenditures, 106.41(c)
  Facilities, 106.41(c)
  Travel, 106.41(c)
  Scholarships, [64, 65]; 106.37(d)
  General, [69, 70, 71, 72, 73, 74, 75]; 106.41(a)
  Separate teams, [75]; 106.41(b)

B

BFOQ, [96]; 106.61

C

Comparable facilities
  Housing, [42, 54]; 106.32
  Other, 106.33, 106.35(b)
Compensation [84, 87, 92]; 106.54
Counseling
  Disproportionate classes, [45, 59]; 106.36(c)
  General, [45, 59]; 106.36(a)
  Materials, [45, 59]; 106.36(b)
Course Offerings
  Adjustment period, [55]; 106.34(a) (i)
  General, [7, 43]; 106.34
  Music classes, [43]; 106.34(f)
  Physical education, [43, 56, 58];
  Sex education, [43, 57]; 106.34(e)
Coverage, [5]; 106.11 to 106.17
  Exemptions
Curricular materials, [52]; 106.42(a)

D

Definitions, [14, 15]; 106.2 (a) to (r)
Designation of responsible employee, [20, 22]; 106.8(a), (b)
Dissemination of policy, [21]; 106.9
  Distribution, 106.9(c)
  Notification of policy, [21]; 106.9(a)
  Publications, 106.9(b)
Dress codes 106.31(b) (4)

E

Education Institutions
  Controlled by religious organizations, 106.12
  Application, [28, 29]; 106.12(a)
  Exemption, [26]; 106.12(b)
Education Program and Activities
  Benefiting from Federal financial assistance, [10, 11]; 106.11
  General, [10, 11, 53]; 106.31(a)
  Programs not operated by recipient, [41, 54]; 106.31(c)
  Specific prohibitions, [38, 39, 40, 53]; 106.31 (b)
Effective Date, [3]
  Employee responsible for Title IX, see "Designation of Responsible Employee"
Employment
  Advertising, 106.59
  Application, 106.51(b)
  Compensation, [84, 92]; 106.54
  Employment criteria, 106.52
  Fringe benefits, [88, 89]; 106.56
  General, [81, 82, 87]; 106.51
  Job Classification and Structure, 106.55
  Marital and Parental Status, 106.57
  Pregnancy, [85, 93]; 106.57(b)
  Pregnancy as Temporary Disability, [85, 93]; 106.57(c)
  Pregnancy Leave, [85, 93, 94]; 106.57(d)
Pre-Employment Inquiry
  Recruitment, [83, 90, 91, 95]
  Sex as a BFOQ, [96]; 106.61
  Student Employment, [66]; 106.38
  Tenure, 106.51(b) (2)

---

[1] Preamble paragraph numbers are in brackets [ ].

Exemptions, [5, 27, 28, 29, 30, 53]; 106.12(b), 106.13, 106.14, 106.15(a), 106.15(d), 106.16

F

Federal Financial Assistance, 106.2(a)
Financial Assistance to students, [46, 60, 61]; 106.37
  Athletic Scholarships, [46, 64, 65]; 106.37(d)
  Foreign institutions, study at [63]; 106.31(c)
  General, 106.37
  Non-need scholarships, [62]; 106.37(b)
  Pooling of sex-restrictive, [46, 61, 62]; 106.37(b)
  Sex-restrictive assistance through foreign or domestic wills [46, 61, 62]; 106.37(b)
Foreign Scholarships, see "Financial assistance" 106.37 and "Assistance to 'outside' discriminatory organizations", 106.31(c)
Fraternities/Sororities
  Social, [53, 27, 28]; 106.14(a)
  Business/professional, [40, 53, 27, 28]; 106.31 (b) (7)
  Honor societies, [40, 53]; 106.31(b) (7)
Fringe benefits, [67, 88, 89]; 106.56, 106.39
  Part-time employees, [89]

G

Grievance Procedure, see "Designation of responsible employee", 106.8(a), (b)

H

Health and Insurance Benefits and Services, [67, 88, 93]; 106.39, 106.56
Honor societies, [40, 53]; 106.31(b) (7)
Housing, 106.32
  Generally, [42]; 106.32(b)
  Provided by recipient, 106.32(b)
  Other housing, [54]; 106.32(c)

J

Job Classification and Structure, 106.55

L

LEA's, [44]; 106.35

M

Marital and Parental Status
  Employment
  General, [85, 93, 94]; 106.57
  Pregnancy, [85, 93, 94]; 106.57(b)
  Pregnancy as a temporary disability, [85, 93, 94]; 106.57(c)
  Pregnancy leave, [85, 93, 94]; 106.57(d)
  Students
  General, [49]; 106.40(a), (b)
  Pregnancy and related conditions, [50]; 106.40(b) (1) (2) (3) (4) (5)
  Class participation, [50]; 106.40(b) (1)
  Physician certification, [50]; 106.40(b) (2)
  Special classes, [50]; 106.40(b) (3)
  Temporary leave, [50]; 106.40(b) (4), (5)
Membership Practices of Social fraternities and sororities, [27, 28, 53]; 106.14(a)
  Voluntary youth service organizations, [27, 28, 53]; 106.14(c)
  YMCA, YWCA and others, [27, 28, 53]; 106.14(b)
Military and Merchant Marine Educational Institutions, [29]; 106.13

P

Pooling, see "Financial Assistance", 106.37
Pre-employment Inquiries
  Marital status, [86, 95]; 106.60(a)
  Sex, 106.60(b)
Preference in Admissions, [35]; 106.22
  See also "Remedial and Affirmative Action"
Pregnancy, Employment
  General, [85, 93, 94]; 106.57
  Pregnancy, [85, 93, 94]; 106.57(b)
  Pregnancy as temporary disability, [85, 93, 94]; 106.57(c)
  Pregnancy leave, [85, 93, 94]; 106.57(d)
  Students
  General, [49, 50]; 106.40 (a) and (b)
  Pregnancy and related conditions; [50]; 106.40(b) (1) to (5)
  Class Participation, [50, 55, 58]; 106.40(b) (1)
  Physical certification, [50]; 106.40(b) (2)
  Special class, [50]; 106.40 (b) (3)
  Temporary leave, [50]; 106.40(b) (4), (5)
Private Undergraduate Professional Schools, [30]; 106.15(d)
Purpose of Regulation, [13]; 106.1

R

Real Property, 106.2(g)
Recruitment
  Employment
  Nondiscrimination, [83, 91]; 106.53(a)
  Patterns, 106.53(b)
Student
  Nondiscrimination, [34, 35]; 106.23(a)
  Recruitment at certain institutions, 106.23 (b)
Religious Organizations
  Application, [29, 28]; 106.12(a)
  Exemption, [26]; 106.12(b)
Remedial and Affirmative Actions, [16, 17, 24]; 106.3

S

Scholarships, see "Financial Assistance", 106.37

Self-evaluation, [16, 22]; 106.3(c), (d)
Surplus Property (see Transfer of Property 106.5)
  Duration of obligation 106.4(b)
  Real Property 106.4(b)(1)

T

Textbooks and curricular materials, [52, 79, 80]; 106.42
Termination of funds, [10, 11]
Transfer of property, 106.5
Transition Plans
  Content of plans, 106.17(b)
  Different from Adjustment period, [78]; 106.41(d)
Submission of plans, 106.17(a)

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE: For the text of these guidelines, see 34 CFR Part 100, Appendix B.

[44 FR 17168, Mar. 21, 1979]

CHAPTER II—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, DEPARTMENT OF EDUCATION

Part		*Page*
200	Financial assistance to local and State agencies to meet special educational needs	383
201	Financial assistance to local educational agencies for children with special educational needs	424
203	Grants to State agencies for programs to meet the special educational needs of children in institutions for neglected or delinquent children	478
204	Grants to State educational agencies to meet the special educational needs of migratory children	481
208	Strengthening State educational agency management	497
209	Administration of education programs and duties of the State educational agency	502
211	Guidance and counseling	506
215	Follow through program	516
218	Hearings in connection with school construction and financial assistance in federally impacted areas	531
219	School construction assistance in cases of certain disasters	534
220	Assistance for current school expenditures in cases of certain disasters	541
221	Assistance for school construction in areas affected by Federal activities	550
222	Assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educational agencies cannot provide suitable free public education	578
223	Special impact and provisions for local educational agencies that claim entitlements based on the number of children residing on Indian lands	624

Part		*Page*
230	Asbestos detection and control: Local educational agencies	632
231	Asbestos detection and State plan: State educational agencies	640
240	Teacher centers	655
250	Indian Education Act—general provisions	661
251	Entitlement grants—local educational agencies and tribal schools	667
252	Indian-controlled schools—establishment	674
253	Indian-controlled schools—enrichment projects	679
254	Demonstration projects—local educational agencies	682
255	Educational services for Indian children	685
256	Planning, pilot, and demonstration projects for Indian children	689
257	Educational personnel development	692
258	Educational services for Indian adults	697
259	Planning, pilot, and demonstration projects for Indian adults	700
260	Adult education research and development projects	703
261	Adult education surveys	706
262	Adult education dissemination and evaluation projects	709
263	Indian fellowship program	712
270	Desegregation of public education	716
280	Emergency school aid	730
295	Career education, State allotment program	764
296	Career education, discretionary programs	770

PART 200—FINANCIAL ASSISTANCE TO LOCAL AND STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
200.3 Applicability of other Title I regulations.
200.4 Applicability of other statutes and regulations.
200.5 Definitions.
200.6 Acronyms that are frequently used.
200.7-200.9 [Reserved]

Subpart B—Allocation of Title I Funds

200.10 Amount of funds available for Title I grants.
200.11-200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

200.20 State application.
200.21 State monitoring and enforcement plan (MEP).
200.22-200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

PARTICIPATION

200.30 Teacher and school board participation.
200.31 Parental participation.
200.32-200.39 [Reserved]

CONSULTATION AND COORDINATION

200.40 Coordination with other programs.
200.41 Coordination of health, nutrition, or social services.
200.42 Simultaneous use of Title I funds and other funds.
200.43 Jointly operated projects.
200.44-200.49 [Reserved]

PROJECT DESIGN

200.50 Use of evaluations in planning.
200.51 Sufficient size, scope, and quality of projects.
200.52 Prohibition against using Title I funds to provide general aid.
200.53 Minimum expenditure for a Title I project.
200.54 Sustaining educational gains.
200.55 Individualized educational plan.
200.56-200.59 [Reserved]

PERSONNEL

Sec.
200.60 Training education aides and volunteers.
200.61 Noninstructional duties.
200.62-200.69 [Reserved]

ALLOWABLE COSTS

200.70 Allowable costs under EDGAR.
200.71 Specific requirements concerning allowable costs under Title I.
200.72 Use of Title I funds for planning.
200.73 Use of Title I funds for State administration.
200.74 Use of Title I funds for health, nutrition, or social services.
200.75 Use of Title I funds for training eligible persons.
200.76 Use of Title I funds for bonus pay.
200.77 Use of Title I funds for evaluation.
200.78 LEA's use of Title I funds for selecting children to receive Title I services.
200.79 LEA's use of Title I funds for expenses related to advisory councils.
200.80 Use of Title I funds for construction.
200.81 Use of Title I funds for equipment.
200.82 Use of Title I funds for reimbursement of volunteers.
200.83 Control of funds.
200.84-200.89 [Reserved]

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

200.90 Maintenance of effort.
200.91 Waiver of the maintenance of effort requirement.
200.92 Supplement, not supplant.
200.93 Excess costs: Introduction.
200.94 Excess costs: Instructional services.
200.95 Excess costs: Noninstructional services.
200.96-200.99 [Reserved]

Subpart F—State and Local Administrative Responsibilities

GENERAL

200.100 Applicability of the regulations in Subpart F.
200.101 Payments for State administration.
200.102 Payments by SEAs.
200.103-200.109 [Reserved]

APPLICATION APPROVAL

200.110 SEA approval of applications from LEAs and State agencies.
200.111 Opportunity for a hearing on application disapproval.
200.112 Appeal to the Secretary.
200.113 Amendments to the application.
200.114-200.119 [Reserved]

STATE RULEMAKING

Sec.
200.120 Authority for State rulemaking.
200.121 Limitations on State rulemaking authority.
200.122 Examples of State rulemaking.
200.123-200.129 [Reserved]

EVALUATION

200.130 Evaluation procedures.
200.131-200.139 [Reserved]

RECORDKEEPING

200.140 Recordkeeping requirements.
200.141 Access to information.
200.142 Access by State and Federal auditors.
200.143-200.149 [Reserved]

STATE MONITORING

200.150 Obligation to adopt standards for monitoring.
200.151 Minimum standards for monitoring.
200.152-200.159 [Reserved]

REPORTING

200.160 Reporting to the Secretary.
200.161 Reporting to the SEA.
200.162-200.169 [Reserved]

TECHNICAL ASSISTANCE AND DISSEMINATION OF INFORMATION

200.170 Technical assistance provided by the SEA
200.171 Dissemination of information to LEAs and State agencies.
200.172 Dissemination of information to teachers and administrators.
200.173-200.179 [Reserved]

COMPLAINT REVIEW AND RESOLUTION

200.180 Contents of a complaint.
200.181 Who may file a complaint
200.182 Where to file a complaint.
200.183 Required procedures for resolution of complaints that are filed with LEAs or State agencies.
200.184 Time limit for resolution of complaints that are filed with LEAs or State agencies.
200.185 Appeals from resolutions by LEAs or State agencies.
200.186 Required procedures for resolution of appeals and complaints that are filed with SEAs.
200.187 Time limit for resolution of appeals and complaints that are filed with SEAs.
200.188 Contents of the final resolution by an SEA.
200.189 [Reserved]

STATE AUDITS, RESOLUTION, AND REPAYMENT

Sec.
200.190 State audits.
200.191 Audit resolution.
200.192 Audit appeals.
200.193 Appeal to the Secretary.
200.194 Repayment of misspent Title I funds.
200.195 Use of misspent funds that are repaid to SEAs.
200.196 Collection action by the Secretary.
200.197-200.199 [Reserved]

STATE WITHHOLDING OF PAYMENTS

200.200 SEA withholding of Title I payments.
200.201 Notice to the public of SEA withholding.
200.202 Appeal to the Secretary.
200.203-200.209 [Reserved]

STATE COMPLIANCE AGREEMENTS

200.210 Use of a State compliance agreement.
200.211 Contents of a State compliance agreement.
200.212 Duration of a State compliance agreement.
200.213 Effect of expiration of a State compliance agreement.
200.214 Notice of a State compliance agreement.
200.215-200.219 [Reserved]

Subpart G—Federal Administrative Responsibilities

APPLICATION APPROVAL

200.220 Approval of State applications and annual program plans.
200.221 Opportunity for a hearing on disapproval of a State application.
200.222-200.229 [Reserved]

EVALUATION

200.230 Secretary's evaluation procedures.
200.231-200.239 [Reserved]

COMPLAINT REVIEW AND RESOLUTION

200.240 Contents of a complaint.
200.241 Procedures for receiving direct complaints.
200.242 Procedures for handling direct complaints.
200.243 Appeals from final resolutions by SEAs.
200.244 Preliminary review of appeals.
200.245 The designated official's procedures for resolving direct complaints and appeals.
200.246 Administrative appeals from the designated official's resolution.
200.247 Preliminary review of administrative appeals.

Sec.
200.248 The Assistant Secretary's procedures for resolving administrative appeals.
200.249 [Reserved]

AUDITS AND AUDIT RESOLUTION

200.250 Audits by the Inspector General.
200.251 Audit resolution procedures.
200.252 Judicial review of audit resolutions.
200.253-200.259 [Reserved]

WITHHOLDING OF PAYMENTS

200.260 Withholding of Title I payments.
200.261 Suspension of Title I payments pending completion of withholding proceedings.
200.262 Judicial review of withholding actions.
200.263 Notice to the public of the Secretary's withholding.
200.264-200.269 [Reserved]

FEDERAL COMPLIANCE AGREEMENTS

200.270 Use of a Federal compliance agreement.
200.271 Contents of a Federal compliance agreement.
200.272 Time period for coming into compliance under a Federal compliance agreement.
200.273 Duration of a Federal compliance agreement.
200.274 Effect of expiration of a Federal compliance agreement.
200.275 Notice of a Federal compliance agreement.
200.276-200.279 [Reserved]

CEASE AND DESIST PROCEEDINGS

200.280 Procedures for issuing cease and desist orders.
200.281 Judicial review of cease and desist orders.
200.282 Enforcement of cease and desist orders.
200.283-200.289 [Reserved]

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Subpart A—General

§ 200.1 Purpose.

The programs authorized by Title I of the Elementary and Secondary Education Act of 1965, as amended, provide financial assistance to—

(a) Local educational agencies (LEAs) to expand and improve their educational programs through projects designed to meet the special educational needs of—

(1) Educationally deprived children in areas with concentrations of children from low-income families; and

(2) Children in local institutions for neglected or delinquent children;

(b) State agencies for projects designed to meet the special educational needs of—

(1) Handicapped children; and

(2) Children in institutions for neglected or delinquent children, or in adult correctional institutions;

(c) State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(d) The Secretary of the Interior to meet the special educational needs of Indian children.

(Sec. 101, 20 U.S.C. 2701)

§ 200.2 Applicability of regulations in this part.

The regulations in this part apply to all programs authorized under Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Sec. 101-198, 20 U.S.C. 2701-2854)

§ 200.3 Applicability of other Title I regulations.

The regulations in this part are supplemented by the regulations in 34 CFR Parts 201, 302, 203, and 204, which contain additional requirements relating to each of the categories of Title I programs:

(a) 34 CFR Part 201 applies to projects—

(1) Designed to meet the special educational needs of—

(i) Educationally deprived children in areas with concentrations of children from low-income families; and

(ii) Children in local institutions for neglected or delinquent children; and

(2) Operated by LEAs.

(b) 34 CFR Part 302 applies to projects—

(1) Designed to meet the special educational needs of handicapped children; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(c) 34 CFR Part 203 applies to projects—

(1) Designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(d) 34 CFR Part 204 applies to projects—

(1) Designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(2) Operated by SEAs.

(Sec. 101-198, 20 U.S.C. 2701-2854)

§ 200.4 Applicability of other statutes and regulations.

In addition to the regulations in this part and in 34 CFR Parts 201, 302, 203, and 204, the following statutes and regulations apply to financial assistance provided under Title I of the Elementary and Secondary Education Act of 1965, as amended:

(a) General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(b) Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs), 34 CFR Part 77 (General), and 34 CFR Part 78 (Education Appeal Board).

(Sec. 101-198, 20 U.S.C. 2701-2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, and 78)

§ 200.5 Definitions.

The following definitions apply to this part and to 34 CFR Parts 201, 302, 203, and 204:

"Applicant" means a party requesting a grant or subgrant under a program administered by the Department.

"Application" means a request for a grant or subgrant under a program administered by the Department.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education within the Department.

"Average daily attendance" (ADA) means the average number of children in attendance in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be in attendance at a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be in attendance at a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average daily membership" (ADM) means the average number of children enrolled in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be enrolled in a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be enrolled in a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average per pupil expenditure"—

(1) In the case of a State or the United States, this term means the sum of (i) the aggregate current expenditures of all LEAs in the State or in the United States, as the case may be, and (ii) any direct current expenditures by the State or all of the States, as the case may be, for the operation of these LEAs; divided by (iii) the aggregate number of children in ADA to whom these LEAs provided free public education during the year preceding the one for which the computation is made.

(2) For purposes of this definition, aggregate current expenditures are—

(i) Aggregate expenditures during the third fiscal year preceding the fiscal year for which the computation is made; or

(ii) If satisfactory data for the third preceding fiscal year in paragraph (1)(i) of this definition are not available at the time of computation, aggregate expenditures during the most recent preceding fiscal year of which satisfactory data are available.

(3) Direct current expenditures shall be computed without regard to the source of funds from which these expenditures are made.

(4) For purposes of this definition, the United States means the 50 States plus the District of Columbia.

"Cease and desist" means to discontinue a prohibited practice or to initiate a required practice.

"Children" means persons—

(1) Not above age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Construction" includes any work needed for—

(1) The preparing of drawings and specifications for school facilities;

(2) The erection, building, acquiring, altering, remodeling, improving, or extending of school facilities; or

(3) The inspection and supervision of the construction of school facilities.

"County" means those divisions of a State that are used by the Secretary of Commerce in compiling and reporting data regarding counties.

"Current expenditures" means expenditures for free public education. The term—

(1) Includes expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV of the Elementary and Secondary Education Act of 1965, as amended.

"Department" means the United States Department of Education.

"Elementary school" means a day or residential school that provides elementary education, as determined by State law.

"Equipment" means—

(1) Machinery, utilities, and building equipment;

(2) Any enclosures or structures necessary to house the items in paragraph (1) of this definition; and

(3) All other items necessary for the functioning of a facility that is used to provide educational services, including items like—

(i) Instructional equipment and necessary furniture;

(ii) Printed, published, and audiovisual instructional materials; and

(iii) Books, periodicals, documents, and other related materials.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency for recordkeeping.

"Free public education"—

(1) Means education that is provided—

(i) At public expense, under public supervision and direction, and without tuition charge; and

(ii) As elementary or secondary school education in the applicable State; and

(2) Does not include any education provided beyond grade 12.

"Grant period" means the period for which grant funds have been awarded.

"Local educational agency" (LEA)—

(1) Means a public board of education or other public authority legally constituted within a State for either administrative control or direction of—or to perform a service function for—public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of school districts or counties recognized in a State as an admininstrative agency for public elementary or secondary schools; and

(2) Includes any public institution or agency—other than those specified in paragraph (1) of this definition—having administrative control and direction of a public elementary or secondary school.

"Parent" means natural parent, step-parent, parent through adoption, legal guardian, or other persons acting in the place of a parent.

"Participating children" means children selected to receive Title I services during the current fiscal year.

"Preschool children" means children who are—

(1) Below the age and grade level at which the applicant agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Project" means the activity described in an application.

"Project period" means the period for which the SEA or the Secretary approves a project.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"School facilities"—

(1) Means classrooms and related facilities, including initial equipment, for free public education, or interests in land, including site, grading, and improvements, on which the facilities are constructed; and

(2) Does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"Secondary school"—

(1) Means a day or residential school that provides secondary education, as determined by State law; and

(2) Does not include any education provided beyond grade 12.

"Secretary" means the United States Secretary of Education.

"State" means—

(1) A State of the United States; or

(2) Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State agency" means—

(1) A State-operated agency directly responsible for providing free public education for handicapped children, as that term is defined in section 602(1) of the Education of the Handicapped Act (20 U.S.C. 1401(1));

(2) A State-operated agency directly responsible for providing free public education for children in institutions for neglected or delinquent children, or in adult correctional institutions; or

(3) A State educational agency in its capacity as an agency operating a program for migratory children of migratory agricultural workers or fishers. The term "State agency" does not include a State educational agency in its capacity as the agency carrying out State administrative responsibilities under Subpart F of this part.

"State educational agency" (SEA) means the State Board of Education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in the State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or by State law.

"Suspension" means temporarily stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project, pending the outcome of a withholding hearing.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended, dealing with financial assistance to meet the special educational needs of children.

"Title IV" means Title IV of the Elementary and Secondary Education Act of 1965, as amended, dealing with educational improvement, resources, and support.

"Title V" means Title V of the Elementary and Secondary Education Act of 1965, as amended, dealing with State leadership.

"Withholding" means stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project for the period of time the agency is in violation of a requirement.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§ 200.6 Acronyms that are frequently used.

The following acronyms are used frequently in this part and 34 CFR Parts 201, 302, 203, and 204:

"ADA" stands for average daily attendance.

"ADM" stands for average daily membership.

"EDGAR" stands for the Education Department General Administrative Regulations.

"ESEA" stands for the Elementary and Secondary Education Act of 1965, as amended.

"GEPA" stands for the General Education Provisions Act.

"LEA" stands for local educational agncy.

"MEP" stands for monitoring and enforcement plan.

"SEA" stands for State educational agency.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 200.7-200.9 [Reserved]

Subpart B—Allocation of Title I Funds

§ 200.10 Amount of funds available for Title I grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to State agencies under paragraph (b) of this section and to LEAs under paragraph (c) of this section;

(2) State administration of Title I programs; and

(3) If applicable, projects under 34 CFR Part 204 for migratory children of migratory agricultural workers or fishers.

(b) *Grants to State agencies.* The SEA shall annually notify each eligible State agency of the amount of Title I funds that the Secretary has determined the State agency is eligible to receive under 34 CFR Parts 302 or 203 for the next fiscal year.

(c) *Grants to LEAs.* The SEA, on the basis of State and county allocations provided the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine the amount of Title I funds that each LEA is eligible to receive under 34 CFR Part 201 for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (c)(1) of this section.

(d) *Payments to the Department of the Interior.* The Secretary annually determines the amount of Title I funds allotted for payments to the Secretary of the Interior to meet the special educational needs of educationally deprived Indian children.

(Sec. 111, 20 U.S.C. 2711)

§§ 200.11-200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

§ 200.20 State application.

(a) *Submission of the State application.* A State that wishes to receive Title I funds, except funds for a project for migratory children covered by 34 CFR Part 204, shall have on file with the Secretary an application that—

(1) Has been properly submitted to the Secretary by the SEA of that State; and

(2) Meets the requirements in paragraph (b) of this section.

(b) *Contents of the State application.* The application required by paragraph (a) of this section must include—

(1) Satisfactory assurances that the SEA will comply with all applicable requirements of—

(i) The Title I statute and regulations;

(ii) EDGAR; and

(iii) GEPA (Section 435 of GEPA specifically requires that an application contain certain assurances); and

(2) Any additional information that the Secretary considers necessary to make the findings required under section 182 of Title I pertaining to approval of applications.

(Sec. 162, 20 U.S.C. 2802; Sec. 182, 20 U.S.C. 2832; Sec. 435 of GEPA, 20 U.S.C. 1232d)

§ 200.21 State monitoring and enforcement plan (MEP).

(a) *Submission of the MEP.* An SEA that receives Title I assistance shall submit to the Secretary—

(1) A single MEP that covers all Title I programs; or

(2) A separate MEP for each of the four categories of Title I programs described in § 200.3.

(b) *Frequency of submission.* (1) The SEA shall submit the MEP, or MEPs, required under paragraph (a) of this section at the times the Secretary prescribes.

(2) In any case, this shall be at least once every three years.

(c) *Contents of the MEP.* The MEP must include—

(1) A report of the Title I monitoring and enforcement activities that the SEA has conducted since submitting its previous MEP;

(2) A program of regular visits by SEA personnel to Title I projects that meets the requirements in § 200.151;

(3) A statement of the matters to be reviewed during the site visits that meets the requirements in § 200.151;

(4) A description of the SEA's procedures for verifying information provided by LEAs and State agencies, including the use of other sources available to the SEA to verify that information;

(5) A description of—

(i) The State's procedures required by § 200.190 for conducting regular audits of Title I expenditures made by LEAs and State agencies; and

(ii) The SEA's procedures for resolving audit findings and recommendations under §§ 200.191-200.196;

(6) A description of the SEA's procedures for resolving direct complaints and appeals under §§ 200.180-200.188; and

(7) A description of the SEA's methods for determining that LEAs are in compliance with the requirements in 34 CFR 201.80-201.82 and 34 CFR 201.90-201.97 concerning the equitable provision of services to children enrolled in private schools.

(d) *Amendments.* An SEA shall submit to the Secretary amendments to an MEP whenever the SEA has substantially changed a policy or procedure that is described in that MEP.

(e) *Copies of MEP.* Upon request, an SEA shall provide, without charge, a copy of its current MEP to any Title I advisory council or LEA.

(Sec. 171, 20 U.S.C. 2821)

§§ 200.22-200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

PARTICIPATION

§ 200.30 Teacher and school board participation.

An agency that receives Title I assistance shall—

(a) Involve the following persons in both planning for Title I projects and evaluating their effectiveness:

(1) Teachers in schools participating in the Title I project.

(2) School boards, or comparable authorities, that have jurisdiction over the schools participating in the Title I project and are responsible to the public; and

(b) Make available to the persons described in paragraph (a) of this section a copy of the Title I project evaluation required by § 200.130 so that those persons can use the evaluation in planning and improving projects to be carried out in subsequent years.

(Sec. 124(i), 20 U.S.C. 2743(i))

§ 200.31 Parental participation.

(a) *Required parental participation.* An agency that receives Title I assistance shall give the parents of children participating in Title I projects an opportunity to—

(1) Participate in establishing Title I projects;

(2) Make recommendations concerning the instructional goals of Title I projects; and

(3) Assist their children in achieving the instructional goals.

(b) *Information for parents.* In order to facilitate the parental participation described in paragraph (a) of this section, the agency that receives Title I assistance shall inform the parents of children participating in its Title I projects of—

(1) The instructional goals of the current Title I projects; and

(2) The progress that their children are making toward achieving the instructional goals.

(c) *Other applicable regulations on parental involvement.* Title 34 CFR Parts 201 and 204 contain additional requirements for parental involvement in the Title I projects covered by those parts.

(Sec. 124(j), 20 U.S.C. 2734(j))

§§ 200.32–200.39 [Reserved]

CONSULTATION AND COORDINATION

§ 200.40 Coordination with other programs.

(a) An agency that receives Title I assistance shall demonstrate in its Title I project application that—

(1) In developing its Title I project, it has taken into consideration the benefits and services that are or may be available, during the period covered by the application, through other public and private agencies, organizations, or individuals; and

(2) In order to avoid duplication of effort and to ensure that all projects complement each other, it has considered suggestions and offers of assistance made by other agencies that may aid in carrying out or making more effective the Title I project.

(b) The Secretary strongly encourages the agency to coordinate Title I instructional services with services provided under other programs, including the regular instructional program provided by the LEA.

(Sec. 124(f)(1), 20 U.S.C. 2734(f)(1))

§ 200.41 Coordination of health, nutrition, or social services.

(a) *Requests for assistance.* (1) Before an agency that receives Title I assistance may use Title I funds for health, nutrition, or social services, it must ask the SEA for assistance in locating and using other Federal and State programs that provide these services.

(2) In its request for the assistance described in paragraph (a)(1) of this section, the agency shall ask the SEA for information concerning—

(i) Other programs that provide the types of health, nutrition, or social services that the agency wishes to provide with Title I funds;

(ii) The types of services provided by these programs; and

(iii) The conditions and procedures for obtaining the services under these other programs, including where the services are available.

(b) *Approval by the SEA.* The SEA may approve the use of Title I funds for health, nutrition, or social services only if—

(1) The services are designed to address an identified need of the children who have been selected to participate in the Title I project; and

(2) (i) The funds and services available from other programs are being fully used and are inadequate to meet the identified needs of the children who have been selected to participate in the Title I project;

(ii) The services are not available at all; or

(iii) The conditions for receipt of the services cannot be met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.42 Simultaneous use of Title I funds and other funds.

An agency that receives Title I assistance may simultaneously use Title I funds and funds from other sources to finance portions of a particular service or project if the agency—

(a) (1) Clearly and separately identifies the portion of the service or project supported with Title I funds, and the portion or portions supported by each other source of funds; and

(2) Maintains records that are adequate to document that all Title I funds are spent in compliance with all applicable Title I requirements; or

(b) Qualifies for an exception under § 200.140(c).

(Sec. 124(f), 20 U.S.C. 2734(f); Sec. 127(a), 20 U.S.C. 2737(a))

§ 200.43 Jointly operated projects

Two or more agencies may apply to operate a Title I project jointly if—

(a) The agencies have entered into an agreement for carrying out the jointly operated project; and

(b) The terms of the agreement are specified in a joint Title I project application.

(Sec. 124(o), 20 U.S.C. 2734(o))

§§ 200.44–200.49 [Reserved]

PROJECT DESIGN

§ 200.50 Use of evaluations in planning.

An agency that receives Title I assistance shall use the results of the evaluations required under § 200.130 in planning for and improving Title I projects.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.51 Sufficient size, scope, and quality of projects.

An agency that receives Title I assistance may use Title I funds for a project only if—

(a) The educational objectives of the project are directly related to one or more of the special educational needs of the children participating in the project;

(b) The resources to be used in the project and the plans for their use are consistent with and show reasonable promise of substantial progress toward meeting the special educational needs of the children being served; and

(c) The project is concentrated on a sufficiently limited number of services and a sufficiently limited number of children to show reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.52 Prohibition against using Title I funds to provide general aid.

Except as provided in 34 CFR 201.71(d) and 34 CFR 201.72–201.74, an agency that receives Title I assistance—

(a) Shall use Title I funds only for projects that are designed to meet the special educational needs of the eligible children that are selected to participate in the project; and

(b) May not use Title I funds for a project that has been designed to meet, or will have the effect of meeting, the general needs of—

(1) A school;

(2) The agency;

(3) An entire grade; or

(4) The student body at large in a school.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.53 Minimum expenditure for a Title I project.

(a) Except as provided in paragraph (b) of this section, a Title I project must involve expenditures of at least $2,500 of Title I funds.

(b) An SEA may reduce the minimum expenditure requirement in paragraph (a) of this section if the SEA determines that it is impossible for the agency that is receiving Title I assistance to—

(1) Meet the requirement on its own; or

(2) Join with another agency or agencies for the purpose of meeting the requirement, for reasons such as—

(i) The distance between the agencies; or

(ii) The difficulty of travel between the agencies.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.54 Sustaining educational gains.

(a) In developing a project to be assisted with Title I funds, an agency shall consider including components designed to sustain the educational gains of children participating in the project beyond the school year during which the agency conducts the project.

(b) Examples of components the agency may consider in meeting the requirement in paragraph (a) of this section include, but are not limited to—

(1) Summer school projects;

(2) Projects at the intermediate level—for example, junior high or middle school projects; and

(3) Projects at the secondary school level.

(Sec. 124(k), 20 U.S.C. 2734(k))

§ 200.55 Individualized educational plan.

The Secretary encourages an agency that receives Title I assistance to develop, if feasible, an individualized educational plan for each child that participates in the Title I project. The plan shall be—

(a) Agreed to by a representative of the agency, the child's Title I teacher, a parent of the child and, if appropriate, the child; and

(b) Evaluated periodically and revised accordingly.

(Sec. 129, 20 U.S.C. 2739)

§§ 200.56-200.59 [Reserved]

PERSONNEL

§ 200.60 Training education aides and volunteers.

An agency operating a Title I project that includes education aides or volunteers shall, under a well-developed plan, provide those education aides and volunteers with training that—

(a) Is directly related to a Title I service;

(b) Is provided as needed to ensure that the education aides and volunteers are adequately trained;

(c) Includes the participation of the professional staff who are, or will be, assisted by the education aides and volunteers; and

(d) Is coordinated with other training programs being provided by the agency.

(Sec. 124(1), 20 U.S.C. 2734(1))

§ 200.61 Noninstructional duties.

(a) *Conditions for assigning Title I personnel.* An agency that receives Title I assistance may assign personnel paid entirely with Title I funds to certain duties that are not related to classroom instruction and that do not benefit only the children participating in the Title I project, if—

(1) These noninstructional duties are limited, rotating, and supervisory;

(2) Personnel with functions similar to those of the Title I personnel, but who are not paid with Title I funds, are assigned to these noninstructional duties at the same school site;

(3) These noninstructional duties do not include substitute teaching of a non-Title I class or regular supervision of a homeroom;

(4) The Title I personnel do not perform any duties for pay that non-Title I personnel perform without pay; and

(5) The proportion of total work time that Title I personnel at the same school site spend performing these noninstructional duties does not exceed the lesser of either—

(i) The proportion of total work time that non-Title I personnel spend performing these noninstructional duties; or

(ii) Ten percent of the Title I person's total work time.

(b) *Examples.* Examples of the types of noninstructional duties that might meet the conditions in paragraph (a) of this section include hall duty, lunchroom supervision, playground supervision, and other tasks commonly shared among the staff in a school.

(Sec. 134, 20 U.S.C. 2754)

§§ 200.62-200.69 [Reserved]

ALLOWABLE COSTS

§ 200.70 Allowable costs under EDGAR.

Subject to the requirements in § 200.71, an agency that receives Title I assistance may, in accordance with the requirements in Subpart F of 34 CFR Part 76 of EDGAR, use those funds to meet the direct costs of project activities and certain indirect costs of project activities.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§ 200.71 Specific requirements concerning allowable costs under Title I.

In addition to meeting the requirements concerning allowable costs in Subpart F of 34 CFR Part 76 of EDGAR, an agency that receives Title I assistance shall use those funds in compliance with the requirements in the Title I statute and Title I regulations, including the requirements in §§ 200.72-200.83. In no event may an agency that receives Title I assistance use those funds for expenditures that are imprudent, extravagant, excessive, or wasteful.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§ 200.72 Use of Title I funds for planning.

(a) Subject to the limitation on amount in paragraph (b) of this section, an agency may use Title I funds for planning if—

(1) The planning directly relates to a Title I project and results, or is reasonably likely to result, in a Title I project; and

(2) The Title I funds are needed for planning because—

(i) Of the innovative nature of the project; or

(ii) The agency lacks the resources that are required to plan adequately for the project.

(b) During a fiscal year, the amount of Title I funds that an agency may use for the planning described in paragraph (a) of this section may not exceed the larger of—

(1) One percent of the total amount of Title I funds received by that agency for that fiscal year; or

(2) $2,000.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(c), 20 U.S.C. 2734(c))

§ 200.73 Use of Title I funds for State administration.

An SEA shall comply with the specific requirements in § 200.101 concerning the use of Title I funds for State administration.

(Sec. 194, 20 U.S.C. 2844; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.74 Use of Title I funds for health, nutrition, or social services.

An agency may use Title I funds for health, nutrition, or social services only if the requirements in § 200.41 are met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.75 Use of Title I funds for training eligible persons.

(a) *Eligible persons.* An agency may use Title I funds to train—

(1) Staff members paid with Title I funds, advisory council members, and volunteers who will perform services in a Title I project;

(2) Regular classroom teachers paid with non-Federal funds or staff specialists paid with non-Federal funds if those persons provide instructional services to participating children or children who will participate in the next school year; and

(3) Principals of schools in which children who participate in a Title I project or who will participate in the next school year are enrolled.

(b) *Scope of the training.* The training referred to in paragraph (a) of this section must be—

(1) Directly related to the Title I services to be provided during the school year in which the training is being provided or in the next school year;

(2) Directly related to the functions that the persons receiving the training provide for the children participating in the Title I project; and

(3) Necessary to meet the needs of the participating children.

(c) *Other requirements.* (1) The training for education aides and volunteers must also meet the requirements of § 200.60.

(2) The training of advisory council members must also meet the requirements of 34 CFR 201.161.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(l), 20 U.S.C. 2734(l); Sec. 125(d), 20 U.S.C. 2735(d))

§ 200.76 Use of Title I funds for bonus pay.

An agency may use Title I funds to pay teachers amounts in excess of regular salaries as a bonus for services in Title I project areas and project schools.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.77 Use of Title I funds for evaluation.

An agency that receives Title I assistance may use Title I funds for evaluations in accordance with the requirements in § 200.130.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.78 LEA's use of Title I funds for selecting children to receive Title I services.

An LEA that receives Title I assistance may, in accordance with 34 CFR 201.103, use Title I funds for the cost of selecting children to receive Title I services from among children that the LEA has already identified as educationally deprived.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.79 LEA's use of Title I funds for expenses related to advisory councils.

To the extent permitted under 34 CFR 201.162, an LEA that receives Title I assistance may use Title I funds for expenses related to advisory councils.

(Sec. 125. 20 U.S.C. 2735)

§ 200.80 Use of Title I funds for construction.

An agency that receives Title I assistance may use Title I funds for construction of school facilities, as defined in § 200.5, only if—

(a) The agency meets the construction requirements in 34 CFR 76.600 of EDGAR;

(b) The agency demonstrates in its Title I application that—

(1) The proposed construction is essential to the success of the Title I project; and

(2) It has made every reasonable effort to find other funds to pay for the construction before applying to use Title I funds for that purpose;

(c) The proposed construction is consistent with the overall State plan for the construction of school facilities;

(d) The proposed construction meets the labor standards in section 433 of GEPA;

(e) The plans for the proposed school facility meet any standards that the Secretary prescribes to ensure that school facilities constructed with Title I funds are—to the extent appropriate in view of the uses to be made of the facilities—accessible to and usable by handicapped persons; and

(f) In developing plans for the proposed school facility, the agency has given adequate consideration to—

(1) Excellence of architecture and design; and

(2) The inclusion of works of art, which may represent up to one percent of the cost of the facility.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(n), 20 U.S.C. 2734(n))

§ 200.81 Use of Title I funds for equipment.

An agency that receives Title I assistance may use Title I funds to purchase equipment only if the agency demonstrates in its Title I application that—

(a) The equipment is needed to operate effectively the Title I project;

(b) In meeting the needs of the Title I project, it has made every reasonable effort to use equipment that it already has; and

(c) It has made every reasonable effort to find other funds to pay for the equipment before applying to use Title I funds for that purpose.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.82 Use of Title I funds for reimbursement of volunteers.

(a) An agency that receives Title I assistance may use Title I funds to reimburse a volunteer for the following expenses, if the expenses are directly related to the performance of the duties and functions of the volunteers in the Title I project and approved in advance by the LEA:

(1) Transportation.

(2) Travel in connection with an approved project activity or training.

(3) Babysitting.

(4) Meals during the period of volunteer service.

(b) An agency may not use Title I funds to reimburse a volunteer for—

(1) Salary lost because of that volunteer's participation in any Title I related activity; or

(2) The cost of membership in any organization or group.

(Sec. 124(a), 20 U.S.C. 2734(a)1; Sec. 124 (1), 20 U.S.C. 2734 (1))

§ 200.83 Control of funds.

An agency may receive Title I funds only if—

(a) Control of the Title I funds and title to property purchased with those funds is in a public agency; and

(b) A public agency will administer the Title I funds and property purchased with those funds.

(Sec. 124(m), 20 U.S.C. 2734(m))

§§ 200.84-200.89 [Reserved]

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.90 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.91, an SEA may approve a Title I application from an LEA or State agency only if that agency demonstrates the following in the application: Its expenditures of State and local funds for the free public education of children—on an aggregate or per pupil basis—are not less for (i) the first fiscal year preceding the fiscal year in which the agency is applying for Title I funds than for (ii) the second preceding fiscal year.

(2) Except if the LEA or State agency did not participate in Title I in the preceding fiscal year, the agency may not use as a second preceding fiscal year a fiscal year that the agency did not use as a first preceding fiscal year on a previous application.

(b) *Meaning of "per pupil basis".* As used in this section, "per pupil basis" means per child included in either ADA or ADM.

(c) *Expenditures to be considered.* The expenditures the SEA shall consider in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section are—

(1) State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Expenditures of Federal funds for free public education for which the LEA or State agency is not accountable to the Federal Government, such as expenditures of funds under the School Assistance in Federally Affected Areas program.

(d) *Expenditures not to be considered.* The SEA may not consider the following expenditures in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section:

(1) Any expenditures for community services, capital outlay, or debt services.

(2) Any expenditures of Federal funds for which the agency is accountable to the Federal Government. These include expenditures made from funds provided under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV.

(e) *Rounding off expenditures.* For purposes of determining compliance with the basic standard in paragraph (a) of this section, expenditures may be rounded off in the following manner:

(1) Per pupil expenditures for each of the fiscal years being compared may be rounded to the nearest ten dollars.

(2) The aggregate expenditures for each of the fiscal years being compared may be rounded to the nearest 100 dollars.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.91 Waiver of the maintenance of effort requirement.

(a) *Waiver authority.* Under section 126(a)(2) of Title I (Waiver of maintenance of effort), the Secretary may waive the maintenance of effort requirements in § 200.90 for a particular LEA or State agency for one fiscal year if the Secretary determines that the waiver is equitable because of exceptional and unforeseen circumstances.

(b) *Waiver request.* An LEA or State agency that has not maintained its fiscal effort as required in § 200.90 may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the expenditures for the two fiscal years being compared;

(2) A statement of the difference between (i) the agency's level of fiscal effort in the preceding fiscal year and (ii) the agency's level of fiscal effort in the second preceding fiscal year; and

(3) A description of the circumstances that the agency considers to be "exceptional and unforeseen."

(c) *Secretary's criteria.* The Secretary considers granting a waiver under paragraph (a) of this section only if the Secretary determines that—

(1) The agency requesting the waiver used every opportunity available under State and local laws to maintain the necessary level of expenditures; and

(2) The failure to maintain effort was due to—

(i) A natural disaster;

(ii) a major and unforeseen decline in State or local financial resources, such as a major loss of tax base not due to public or governmental actions;

(iii) A major and unforeseen decline in Federal funds for free public education and for which the agency is not accountable to the Federal Government; or

(iv) Other exceptional and unforeseen circumstances, which may not include referenda or acts of State legislatures, school boards, or other governmental bodies.

(d) *Actions resulting from a waiver.* If the Secretary grants a waiver under paragraph (a) of this section—

(1) The SEA shall reduce the affected agency's Title I allocation for the fiscal year covered by the waiver in exact proportion to that agency's failure to maintain 100 percent of its level of expenditures of State and local funds for the free public education of children during the second preceding fiscal year;

(2) If the affected agency is an LEA, the State shall reallocate the reduction to other LEAs in the State in accordance with 34 CFR 201.38; and

(3) For the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the affected agency's compliance with the basic standard in § 200.90 on the basis of the level of fiscal effort that would have been required if the affected agency had not been granted the waiver.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.92 Supplement, not supplant.

(a) *Basic requirement for all Title I projects.* An agency that receives Title I Assistance—

(1) Shall use Title I funds to supplement and—to the extent practical—increase the level of funds that would, in the absence of Title I funds, be made available for the education of children participating in Title I projects from non-Federal sources for—

(i) Regular programs; and

(ii) The State phase-in programs described in 34 CFR 201.118(c); and

(2) May not use Title I funds to supplant the non-Federal funds referred to in paragraph (a)(1) of this section.

(b) *Guidelines for LEAs.* In addition to meeting the basic requirement in paragraph (a) of this section, and LEA that receives Title I assistance should refer to the guidelines in 34 CFR 201.130-201.143 to assist it in meeting other supplement, not supplant requirements that apply to certain State and local programs.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d))

[46 FR 5138, Jan. 19, 1981, as amended at 46 FR 18976, Mar. 27, 1981]

§ 200.93 Excess costs: Introduction.

(a) *Basic standard.* (1) Except for the exemptions in 34 CFR 201.118, an agency that receives Title I assistance shall use Title I funds in compliance with the excess costs requirement in section 126(b) of Title I. Sections 200.93-200.95 are guidelines to assist agencies in meeting that requirement. While these guidelines describe permissible ways of meeting the statutory requirement, grantees may develop alternative approaches that comply.

(2) An agency complies with the requirement in section 126(b) of Title I if both of the following conditions are met:

(i) The agency provides Title I instruction as described in the guidelines in § 200.94 (Excess costs: instructional services).

(ii) The agency uses Title I funds to provide noninstructional services as described in the guidelines in § 200.95 (Excess costs: noninstructional services).

(b) *Meaning of "excess costs."* As used in §§ 200.93-200.95, "excess costs" means average per pupil costs directly attributable to a Title I project over and above the agency's average per pupil expenditure, in the most recent year for which satisfactory data are available for pupils in the grade level or levels included in the agency's Title I project.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

[46 FR 5138, Jan. 19, 1981, as amended at 46 FR 18977, Mar. 27, 1981]

§ 200.94 Excess costs: Instructional services.

(a) *Introduction.* (1) An agency satisfies the requirements of § 200.93(a)(2)(i) if it provides instructional services in accordance with the provisions of any one of paragraphs (b) through (g) of this section.

(2) For purposes of this section, "instructional services" means services provided, as part of a program of instruction, by teachers, teacher aides or other similar persons.

(b) *In class project.* (1) For purposes of this section, an "in class project" means a Title I project in which instructional services are provided to participating children in the same classroom setting and at the same time in which they would receive instructional services if they were not participating in the Title I project.

(2) An agency uses Title I funds for the excess costs of an in class project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Title I remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are particularly designed to meet participants' special educational needs.

EXAMPLE. An agency wishes to provide a special program of remedial instruction using a teacher aide to ten high school juniors assigned to one business math class, and to five high school sophomores in a separate compensatory math class which meets at the same time. The teacher aide spends half of each class period in each class, working individually with Title I participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the excess costs requirements of § 200.93(a)(2)(i) if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Title I participants are receiving a program of instruction which meets their individual needs.

(c) *Limited pull out project.* (1) For purposes of this section, a "limited pull out project" means a Title I project in which—

(i) Instructional services are provided to participating children in a different setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Services are provided for a period that does not exceed 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of a limited pull out project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are particularly designed to meet participants' special educational needs.

Example. Fifty third graders participate in a Title I project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Title I project, a special resource center is staffed by personnel paid with Title I funds; Title I participants are pulled out of class for one-half hour, five days per week, to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the fifty participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the excess costs requirements of § 200.93(a)(2)(i) so long as the classroom teacher whose instruction the Title I project is designed to supplement continues to remain responsible for the program of instruction which is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work closely with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Title I participants.

(d) *Extended pull out project.* (1) For purposes of this section, an "extended pull out project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Title I services are provided for a period that exceeds 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of an extended pull out project if either of the following conditions are met:

(i) The agency allocates to the Title I project the full-time equivalent number of non-Title I staff that—in the absence of the Title I service—would have been used to provide the non-Title I funded instructional service that is replaced with the Title I funded service.

(ii) The agency allocates to the Title I project an amount of non-Title I funds required to provide the number of non-Title I funded staff referred to in paragraph (d)(2)(i) of this section.

(3) For purposes of this section, the agency may disregard a fraction of a full-time equivalent staff member. For example, if the full-time equivalent number of staff members is 3.6, the agency is only required to provide the equivalent of 3 non-federally funded staff members.

(e) *Add on project.* (1) For purposes of this section, an "add on project" is one which is provided at a time in which participants would not otherwise be receiving non-Title I funded instructional services, including periods such as vacations, weekends, before or after regular school hours, or during noninstructional time.

(2) An agency uses Title I funds for the excess costs of an add-on project so long as the project is particularly designed to meet participants' special educational needs.

(f) *Replacement projects.* (1) For purposes of this section, a "replacement project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Title I project; and

(ii) The Title I project provides services which replace all or part of the course of instruction regularly provided to Title I participants with a distinct, self-contained Title I program which is particularly designed to meet participants' special educational needs.

(2) An agency uses Title I funds for the excess costs of a replacement project if the conditions in either paragraphs (d)(2)(i) or (d)(2)(ii) are met.

Example. An LEA decides to provide 200 9th graders attending two different junior high schools (100 in each school) with a special, intensive remedial reading program using a very low pupil to teacher ratio for one period per day (5 periods per week), out of the usual 30 period week, in place of those students' regular English class. On the average, 9th grade English teachers teach five classes of 25 children each. The classes each meet for 5 periods per week.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Title I service to provide instruction in English, or the amount of non-Title I funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Calculates the number of children served, on the average, by a full-time equivalent staff member (25 children multiplied by 5 classes equals 125 children served per day);

Calculates the number of children served, by the Title I project (200 children served per day);

Divides the number of children served by the Title I project by the number of children served by a full-time equivalent staff member (200 divided by 125 equals 1.6).

The LEA provides the appropriate number of non-Title I funded staff (disregarding a fraction of a full-time equivalent staff member). Alternatively, the LEA allocates to its Title I project the amount of funds that would be required to provide the appropriate number of non-Title I funded staff.

(g) *Other projects.* An agency uses Title I funds for the excess costs of a project other than one of a type described in paragraph (b), (c), (d), (e), or (f) of this section, so long as it maintains records demonstrating that the average per pupil costs directly attributable to its Title I project exceed the agency's per pupil expenditure, by grade level or levels, for all pupils in the grades included in the agency's Title I project.

(h) *Graduation credits.* Compliance with the requirements of the excess cost provisions of § 200.93(a)(2)(i) is the responsibility of agencies receiving Title I assistance, and in no way affects the award of credits, for purposes of graduation, to students participating in Title I projects.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

[46 FR 5138, Jan. 19, 1981, as amended at 46 FR 18977, Mar. 27, 1981]

§ 200.95 Excess costs: Noninstructional services.

(a) An agency satisfies the requirements of § 200.93(a)(2)(ii) if it provides noninstructional services in accordance with paragraph (b) of this section.

(b) An agency uses Title I funds for the excess costs of noninstructional services so long as—

(1) It provides noninstructional services consistent with the provisions of this part and 34 CFR Part 201; and

(2) It provides noninstructional services which would not, in the absence of Title I, be available to children at the grade level or levels of children participating in its Title I project.

(c) For purposes of this section, "noninstructional services" includes supplies, equipment, or other services which are not instructional services as defined in § 200.94(a)(2).

EXAMPLE. An LEA plans to use Title I funds to provide services of a community-home aide to high school students participating in its Title I project. Use of Title I funds for this purpose would not be appropriate if such an aide is currently otherwise providing services to non-participating students, in the same grade or grades, using non-Title I funds.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

§§ 200.96–200.99 [Reserved]

Subpart F—State and Local Administrative Responsibilities

GENERAL

§ 200.100 Applicability of the regulations in Subpart F.

(a) The regulations in this subpart interpret—

(1) Part C (State administration of projects) of Title I; and

(2) Part A (Administration of educational programs and duties of the SEA) of Title V.

(b) In any fiscal year in which the conditions in paragraph (c)(2) of this section are not met, Part C of Title I applies.

(c) (1) In any fiscal year in which the conditions in paragraph (c)(2) of this section are met, Part A of Title V applies, together with sections 162 (State applications), 171 (State MEPs), 172 (Reporting requirements), 173 (Recordkeeping, fiscal control, and fund accounting), and 174 (Prohibition of consideration of Federal aid in determining State aid) of Title I.

(2) The provisions in paragraph (a)(1) of this section apply for any fiscal year in which the funds appropriated under section 510 (Authorization of payments) of Title V are—

(i) Sufficient to pay the full amount each State is eligible to receive for State administration under section 510(a) (Authorization of payments) of Title V; and

(ii) Included in an act making appropriations for the fiscal year prior to the fiscal year in which those funds will be obligated, and are made available for expenditure prior to the beginning of that fiscal year.

(Sec. 161, 20 U.S.C. 2801; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.101 Payments for State administration.

(a) Except when the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by it for the proper and efficient performance of its duties under Title I, provided that the amount paid by the Secretary for any fiscal year does not exceed the greater of—

(1) 1.5 percent of the amount of Title I funds allocated to the State for that year, including payments to LEAs and State agencies; or

(2) (i) $225,000; or

(ii) $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b) (1) Paragraph (b)(2) of this section applies if, under paragraph (a) of this section, a State receives an amount in excess of the greater of—

(i) One percent of the amount of Title I funds available to the State; or

(ii) (A) $150,000; or

(B) $25,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(2) If a State receives an amount in excess of the amount specified in paragraph (b)(1) of this section, the State shall use that excess—

(i) Exclusively for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I; and

(ii) To supplement, not supplant State and local funds otherwise available for compliance activities.

(c) (1) If the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by the State for the proper and efficient performance of its duties under Title I and Title IV.

(2) However, the Secretary does not pay for any fiscal year more than the greater of—

(i) 1.75 percent of the amount of Title I and Title IV funds allocated to the State for that year; or

(ii) (A) $550,000; or

(B) $87,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(3) In any case, however, the Secretary's payment is not less than the amount each State received for administration of Title I and Title IV projects for fiscal year 1978.

(d) If the conditions in § 200.100(c)(2) are met, the Secretary pays, in addition to the amount authorized under paragraph (c) of this section, an amount not to exceed 25 percent of the amount authorized for each State under paragraph (c) of this section if the SEA—

(1) Uses these funds solely for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I and Title IV;

(2) Applies to receive these funds and specifically describes in its application the intended uses of the funds; and

(3) Uses these funds to supplement, not supplant State and local funds already being used for compliance activities.

(Sec. 194, 20 U.S.C. 2844; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.102 Payments by SEAs.

Except for payments for State administration described in § 200.101, an SEA shall make payments from Title I funds only for projects that it has approved under § 200.110.

(Sec. 164(b), 20 U.S.C. 2811(b))

§§ 200.103-200.109 [Reserved]

APPLICATION APPROVAL

§ 200.110 SEA approval of applications from LEAs and State agencies.

(a) *Standards for approval.* An SEA shall approve the Title I application of an LEA or State agency if the SEA determines, after considering the factors in paragraph (b) of this section, that the agency—

(1) Will use the Title I funds received under the application in compliance with the requirements of—

(i) The Title I statute;

(ii) The Title I regulations;

(iii) GEPA, including the assurances in section 436;

(iv) EDGAR; and

(v) Applicable State rules, regulations, procedures, guidelines, and criteria adopted in compliance with §§ 200.120-200.122;

(2) Will use the Title I funds in accordance with its approved Title I application; and

(3) Is not out of compliance with—

(i) A determination by the SEA or the Secretary that the agency repay misspent Title I funds; or

(ii) A compliance agreement under §§ 200.210-200.214 or §§ 200.270-200.275.

(b) *Factors to be considered.* An SEA may approve an application under paragraph (a) of this section only after the SEA has considered where pertinent—

(1) The results of Federal and State audits of the LEA or State agency submitting the application;

(2) The results of Federal and State monitoring reports of the LEA or State agency submitting the application;

(3) Complaints made by parents or other persons concerning the agency's compliance with Title I requirements; and

(4) Evaluations under section 124(g) of Title I.

(c) *Effective date of approved application.* An SEA shall consider a project approved under paragraph (a) of this section to be approved as of the date on which the application was submitted in approvable form. In no event shall this date be earlier than the first day on which the funds being applied for become available for obligation, or the effective date of the SEA's Title I application submitted and approved under § 200.20.

(d) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA or State agency of its responsibility to comply with all applicable requirements.

(Sec. 164(a), 20 U.S.C. 2811; Sec. 503(a) of Title V, 20 U.S.C. 3143(a))

§ 200.111 Opportunity for a hearing on application disapproval.

(a) An SEA shall provide reasonable notice and opportunity for a hearing to any LEA or State agency prior to disapproving, in whole or in part, that LEA's or State agency's application for Title I funds under 34 CFR Parts 201, 302, or 203.

(b) An LEA or State agency that is aggrieved by the SEA's intended disapproval of its application may, within 30 days of receiving notice of the SEA's intent to disapprove its application, request a hearing.

(c) Within 30 days after it receives a request for a hearing from an LEA or State agency, the SEA shall hold the hearing, on the record, to review its intended disapproval of the agency's application.

(d) Within 10 days after the hearing, the Sea shall issue a written ruling that includes—

(1) The reasons for the SEA's ruling; and

(2) Notice of the LEA's or State agency's right to appeal to the Secretary under § 200.112.

(Sec. 164(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 425 of GEPA, 20 U.S.C. 1231b-2)

§ 200.112 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.111 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file a notice of its intent to appeal with the Secretary.

(Sec. 164(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 425(b) of GEPA, 20 U.S.C. 1231b-2(b))

§ 200.113 Amendments to the application.

(a) *Annual updating of information in Title I application.* An LEA or State agency shall annually update its Title I project application by submitting to its SEA—

(1) Data showing that the LEA or State agency has maintained its fiscal effort as required by § 200.90;

(2) A statement of the amount of Title I funds carried over from the preceding fiscal year, and the amount requested from the agency's current Title I application; and

(3) A budget for the expenditure of Title I funds.

(b) Other amendments to an application. An LEA or State agency shall submit to its SEA amendments to its Title I application and secure the SEA's approval whenever it seeks to make any significant changes (particularly changes resulting from Federal or State audits and monitoring) in activities to be conducted under the agency's application, including changes in—

(1) Services, construction, or purchases of equipment;

(2) Criteria for the selection of children to receive a Title I service;

(3) The number of public and private school children, identified by subject area and grade level, who will participate in the Title I project;

(4) The number and type of staff to be employed;

(5) The amounts of Title I funds to be spent for participating public school children and participating private school children;

(6) The agency's list of school attendance areas or schools designated for Title I projects; and

(7) The grade level or levels of children who will receive a previously approved service.

Sec. 121-134, 20 U.S.C. 2731-2754)

§§ 200.114-200.119 [Reserved]

STATE RULEMAKING

§ 200.120 Authority for State rulemaking.

Except as provided in § 200.121, an SEA may adopt reasonable rules, regulations, procedures, guidelines, criteria, or other requirements that apply to Title I projects.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.121 Limitations on State rulemaking authority.

(a) All rules, regulations, procedures, guidelines, criteria, or other requirements that an SEA adopts under § 200.120 must conform to all applicable Federal laws, including all requirements in the Title I statute and regulations;

(b) Except as provided in 34 CFR 201.90(a)(2) (General standards for bypass actions), the SEA may not, under the authority in § 200.120, prohibit any practice that is authorized under Title I.

(Sec. 165, U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.122 Examples of State rulemaking.

(a) An SEA may adopt reasonable rules concerning the size, scope, and quality of Title I projects.

(b) For example, the SEA may adopt reasonable rules concerning—

(1) The pupil-to-staff ratio to ensure that Title I services are sufficiently concentrated;

(2) The number of hours per day that a child may be removed from a regular class to receive a Title I service; or

(3) The number or categories of curriculum areas that may be included in a Title I project.

(c) LEAs, however, retain the authority to determine—

(1) The grade levels that will be included in their Title I projects; and

(2) The curriculum areas that will be included in their Title I projects, if those curriculum areas meet all Title I requirements.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§§ 200.123–200.129 [Reserved]

EVALUATION

§ 200.130 Evaluation procedures.

(a) *Other applicable requirements.* To evaluate the effectiveness of a Title I project, an agency that receives Title I assistance shall adopt and use effective procedures that meet the requirements in 34 CFR 201.170–201.177, and in 34 CFR Parts 302, 203, or 204, as applicable.

(b) *Required evaluations.* The agency that receives Title I assistance shall, at least once every three years, conduct an evaluation or series of evaluations that—

(1) Addresses the purposes of the Title I project;

(2) Includes collection and analysis of data concerning the degree to which the Title I project has achieved its goals, including the requirements in section 130 (Participation of children enrolled in private schools) of Title I; and

(3) Includes objective measurements of educational achievement in basic skills over at least a twelve-month period in order to determine whether the effects of programs conducted during the regular school year have been sustained over the summer.

(c) *Use of evaluation results.* The agency that receives Title I assistance shall use the results of its evaluations of its Title I project in planning for and improving Title I projects to be carried out in the following years.

(Sec. 124(g), 20 U.S.C. 2734(g))

§§ 200.131–200.139 [Reserved]

RECORDKEEPING

§ 200.140 Recordkeeping requirements.

(a) *General standards for SEAs.* An SEA that receives Title I assistance shall—

(1) Use fiscal control and fund accounting procedures that will ensure proper disbursement of and accounting for Title I funds;

(2) Keep records that show—

(i) The amount and disposition of all Title I funds;

(ii) The total cost of each Title I project; and

(iii) The share of the cost provided from non-Title I sources; and

(3) Keep other records that are needed to facilitate an effective audit of each Title I project.

(b) *General standards for agencies operating a Title I project.* An agency that receives Title I assistance shall keep all records that the SEA requires. These must include—

(1) Records of Title I funds that show—

(i) The amount of Title I funds received;

(ii) How the agency uses the funds;

(iii) The total cost of the project; and

(iv) The share of that cost provided from other sources;

(2) Other records that are needed to facilitate an effective audit of the Title I project;

(3) Records that show the agency's compliance with Title I requirements; and

(4) Records of significant project experiences and results.

(c) *Exception for certain projects.* The SEA need not require an LEA to account separately for Title I funds if the LEA—

(1) Conducts a single compensatory education project that—

(i) Meets all Title I requirements; and

(ii) Is paid for out of Title I funds, as well as out of State and local funds; and

(2) Excludes, under 34 CFR 201.118, State and local expenditures for that compensatory education project in determining compliance with the excess costs and comparability requirements.

(d) *Retention of Records.* All records required under this section must be retained—

(1) For five years after the close of the fiscal year in which the funds were spent;

(2) Until any pending audits concerning the Title I project have been completed; and

(3) Until all findings and recommendations arising out of any audits concerning the Title I project have been finally resolved.

(Sec. 127(a), 20 U.S.C. 2737(a); Sec. 173, 20 U.S.C. 2823; Sec. 437 of GEPA, 20 U.S.C. 1232f)

§ 200.141 Access to information.

(a) *Access provided by the SEA.* Except as provided in paragraph (d) of this section, an SEA shall provide any person with access to documents related to the Title I program in that State if that person has specifically requested information or documents in a written request.

(b) *Access provided by LEAs and State agencies.* Except as provided in paragraph (d) of this section, an LEA or State agency that applies for or receives Title I funds shall provide parents, teachers, or other persons with access to its Title I project application, amendments, prior applications, evaluations of the agency's Title I project, and other documents related to the agency's Title I project.

(c) *Definition of access.* As used in this section, "access" means—

(1) Inspection of the documents at a reasonable time and place; and

(2) (i) Reproduction, on request, of the documents free of charge or at reasonable costs; or

(ii) Provision of the documents for their reproduction by the person who requests them.

(d) *Limitations on access.* An agency may not provide access to documents or records that—

(1) Individually identify children and teachers without the permission of the person so identified; or

(2) The agency is prohibited from releasing under any applicable laws.

(Sec. 127(c), 20 U.S.C. 2737(c); Sec. 173, 20 U.S.C. 2823)

§ 200.142 Access by State and Federal auditors.

An agency that receives Title I assistance shall make all records, documents, and personnel that relate in any way to a Title I project available to State and Federal auditors at the request of those auditors.

(Sec. 127, 20 U.S.C. 2737; Sec. 173, 20 U.S.C. 2823)

§§ 200.143-200.149 [Reserved]

STATE MONITORING

§ 200.150 Obligation to adopt standards for monitoring.

An SEA shall adopt standards for monitoring the effectiveness of the Title I projects operated by LEAs and State agencies. These standards must meet the standards in § 200.151 and be consistent with the MEP that the SEA submitted under § 200.21.

(Sec. 167, 20 U.S.C. 2814; Sec. 171, 20 U.S.C. 2821; Sec. 506 of Title V, 20 U.S.C. 3146)

§ 200.151 Minimum standards for monitoring.

(a) *Purpose and scope of monitoring.* In monitoring the effectiveness of Title I projects in its State, an SEA shall—

(1) Determine whether the Title I projects comply with applicable Title I requirements;

(2) Determine whether the Title I projects are being implemented in accordance with approved project applications;

(3) Evaluate the LEA's or State agency's efforts to assess and improve the quality and effectiveness of the Title I services being provided; and

(4) Provide technical assistance, if appropriate.

(b) *Frequency of on-site visits.* Representatives of the SEA shall—

(1) Visit, at least once every three years, each LEA and State agency that operates a Title I project; and

(2) Visit, at least once every two years, those LEAs and State agencies that receive the largest amounts of Title I funds or have a history of noncompliance with applicable Title I requirements.

(c) *Issuing monitoring reports.* Within 60 days of completing each visit that it conducts under paragraph (b) of this section, the SEA shall issue a written monitoring report to the agency that was visited. The SEA shall include in the report its findings and recommendations concerning—

(1) The agency's compliance with applicable Title I requirements;

(2) The LEA's or State agency's efforts to assess and improve the quality

and effectiveness of the Title I project; and

(3) The need for corrective action, if any.

(d) *Responding to monitoring reports.* Within 45 days of receiving an SEA monitoring report that recommends improvements or requires corrective action, the monitored agency shall submit a written response to the SEA. The agency shall include in its response—

(1) A description of all steps that it has taken, or will take, in response to the SEA's recommendation for improvements or requirement for corrective action; and

(2) If appropriate, a statement of the agency's reasons for not making the improvements or taking all or a part of the corrective action that was required by the SEA.

(e) *Follow-up on recommendations or corrective action.* (1) Within 45 days of receiving the response required under paragraph (d) of this section, the SEA shall review that response to determine whether follow-up action is appropriate.)

(2) Follow-up action may include one or more of the following compliance procedures:

(i) A follow-up visit.

(ii) An audit under §§ 200.190-200.193.

(iii) A withholding action under §§ 200.200-200.201.

(iv) A compliance agreement under §§ 200.210-200.214.

(f) *Making monitoring reports available.* The SEA shall—

(1) Notify the monitored agency of any follow-up action that the SEA plans to take under paragraph (e) of this section;

(2) Send a copy of the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take to the following:

(i) The district advisory council that has been established for the agency that was monitored.

(ii) State and local auditors; and

(3) Provide access, under § 200.141, to the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take.

(Sec. 167, 20 U.S.C. 2814; Sec. 506 of Title V, 20 U.S.C. 3146)

§ 200.152-200.159 [Reserved]

REPORTING

§ 200.160 Reporting to the Secretary.

An SEA shall submit to the Secretary—

(a) A written report (including the results of objective measurements required by section 124(g) (Evaluations of Title I)) evaluating the effectiveness of its Title I projects in improving the educational attainment of participating children. The SEA shall submit this report according to the following schedule:

(1) For projects covered by 34 CFR Part 201, this report is due on February 1, 1981, and February 1 of every second year thereafter.

(2) For projects covered by 34 CFR Parts 302, 203, or 204, this report is due on February 1 of each year;

(b) Any reports the Secretary may require—at such times as the Secretary may require—to determine the amount of funds that the SEA is eligible to receive for any fiscal year; and

(c) All reports specifically required in 34 CFR Parts 201, 302, 203, and 204, as applicable.

(Sec. 172, 20 U.S.C. 2822)

§ 200.161 Reporting to the SEA

An LEA or State agency that receives Title I assistance shall submit to the SEA—

(a) An annual report that contains information reasonably necessary to enable the SEA to perform its Title I duties; and

(b) Any other reports that the SEA may require to carry out its Title I responsibilities, including information (which in the case of reports relating to performance must be based on specific performance criteria related to program objectives) relating to the educational achievement of students participating in Title I projects.

(Sec. 127(b), 20 U.S.C. 2737(b))

§§ 200.162–200.169 [Reserved]

TECHNICAL ASSISTANCE AND DISSEMINATION OF INFORMATION

§ 200.170 Technical assistance provided by the SEA.

(a) An SEA shall develop and implement a comprehensive program to provide technical assistance to LEAs and State agencies concerning the use of Title I funds.

(b) The program required by paragraph (a) of this section must include—

(1) Technical assistance for—

(i) Preparation of applications;

(ii) Planning, development, implementation, and evaluation of programs; and

(iii) Management of projects; and

(2) Other forms of technical assistance needed by LEAs and State agencies.

(Sec. 166, 20 U.S.C. 2813; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.171 Dissemination of information to LEAs and State agencies.

An SEA shall adopt effective procedures for disseminating to LEAs and State agencies—

(a) Significant information derived from educational research;

(b) Information about successful compensatory education projects;

(c) Information about other federally-funded and State-funded programs that may provide needed health, social, and nutrition services to eligible Title I children; and

(d) Any other information that will assist LEAs and State agencies in planning, developing, implementing, and evaluating Title I projects.

(Sec. 166, 20 U.S.C. 2813; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.172 Dissemination of information to teachers and administrators.

(a) An agency that receives Title I assistance shall—

(1) Adopt effective procedures for acquiring and disseminating significant information concerning educational practices to teachers and administrators; and

(2) Develop methods for adopting, where appropriate, promising educational practices into its Title I project.

(b) Possible sources of the information referred to in paragraph (a) of this section may include, but are not limited to—

(1) Educational research;

(2) Demonstration projects;

(3) Other programs; and

(4) Evaluations of Title I projects.

(Sec. 124(h), 20 U.S.C. 2734(h))

§§ 200.173–200.179 [Reserved]

COMPLAINT REVIEW AND RESOLUTION

§ 200.180 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an agency has violated a Title I requirement that is found in the Title I statute, Title I regulations, Title I interpretive rules, GEPA, or EDGAR; and

(b) Information that supports the allegation.

(Sec. 128, 20 U.S.C. 2738; Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.181 Who may file a complaint.

Any parent, teacher, Title I advisory council, or other concerned individual or organization may file a complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.182 Where to file a complaint.

Unless a complaint meets the standards for direct complaints in § 200.186(a)(2) or § 200.242(a), the complainant must comply with the following procedures;

(a) If the complaint relates to a Title I project operated by an LEA, the complaint must be filed, according to the procedures in § 200.183, with that LEA.

(b) If the complaint relates to a Title I project operated by a State agency for the benefit of handicapped children or neglected or delinquent children, the complaint must be filed, according to the procedures in § 200.183, with the State agency that receives Title I funds to operate that Title I project.

(c) If the complaint relates to a Title I project for the benefit of migratory children of migratory agricultural workers or fishers, or the SEA's administration of the Title I project, the complaint must be filed, according to the procedures in § 200.186, with the SEA that receives Title I funds to operate that Title I project.

(Sec. 128, 20 U.S.C. 2738)

§ 200.183 Required procedures for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall develop and implement written procedures for resolving complaints.

(b) The procedures referred to in paragraph (a) of this section must provide—

(1) A specific time limit as provided by § 200.184 for investigating and resolving complaints;

(2) An opportunity for the complainant or the complainant's representative, or both, to present relevant evidence, including an opportunity to question the parties involved;

(3) The right to appeal the final resolution of the LEA or State agency to the SEA under § 200.185;

(4) For the dissemination of information about these procedures to interested persons, including all of the agency's Title I advisory councils; and

(5) For an on-site investigation, if necessary.

(Sec. 128, 20 U.S.C. 2738)

§ 200.184 Time limit for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall resolve each complaint that it receives under § 200.183 within 30 days after it receives the complaint. However, on request of the LEA or State agency, the SEA may provide additional time for the resolution of a complaint because of exceptional circumstances.

(b) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(1) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(2) The fact that complex issues are raised by the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.185 Appeals from resolutions by LEAs or State agencies.

(a) *Who may appeal.* Any person, agency, or organization that has filed a complaint and is dissatisfied with the resolution of the complaint by an LEA or State agency may appeal that resolution to the SEA.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the complainant receives a copy of the resolution of the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.186 Required procedures for resolution of appeals and complaints that are filed with SEAs.

(a) An SEA shall develop and implement written procedures for—

(1) Reviewing appeals from resolutions that have been made by LEAs or State agencies under § 200.183; and

(2) Investigating and resolving complaints filed directly with the SEA, including developing standards for what kind of direct complaints are acceptable.

(b) All procedures developed under paragraph (a) of this section must provide—

(1) A specific time limit, as provided by § 200.187, for resolving appeals or complaints;

(2) The right to appeal the final resolution of the SEA to the Assistant Secretary within 30 days after receiving the SEA's written decision; and

(3) For the dissemination of information, free of charge, about those procedures to interested persons, including all Title I advisory councils of the appropriate LEA or State agency.

(c) In addition to meeting the requirements in paragraph (b) of this section, the complaint resolution procedures developed under paragraph (a)(2) of this section must provide—

(1) That if a complaint filed with the SEA relates to a Title I project operated by an LEA or State agency, the

SEA may either resolve the complaint or refer it to the appropriate LEA or State agency;

(2) For investigation of complaints that are accepted for resolution by the SEA, including an on-site investigation if the SEA determines that it is necessary; and

(3) An opportunity for the complainant or the complainant's representative, or both, and the agency that is operating the Title I project to present relevant evidence, including the opportunity to question parties and any of their witnesses.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.187 Time limit for resolution of appeals and complaints that are filed with SEAs.

(a) Except as provided in paragraph (b) of this section, an SEA that receives an appeal or complaint under § 200.186(a) shall—

(1) Within 60 days of receiving the appeal or complaint, resolve it; or

(2) Within 30 days of receiving a complaint, refer it to the appropriate LEA or State agency for resolution. In that case, the LEA or State agency shall follow the time limit established under § 200.184.

(b) (1) The SEA may determine that the existence of exceptional circumstances justifies the SEA's taking additional time to resolve the complaint or appeal.

(2) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(i) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(ii) The fact that complex issues are raised by the complaint.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.188 Contents of the final resolution by an SEA.

An SEA shall include in its final resolution of an appeal or complaint under § 200.186(a)—

(a) A summary of the facts on which the appeal or complaint is based;

(b) A statement of the Title I requirements that the appeal or complaint alleges to have been violated;

(c) The SEA's findings of fact and a summary of the evidence that the SEA considered in making these findings;

(d) The SEA's conclusions regarding the merits of each allegation in the complaint, and a summary of its reasons for each conclusion;

(e) The SEA's directive for any corrective action that the LEA or State agency must take and when that action must be taken; and

(f) Notice of the procedures through which each dissatisfied party may exercise its right to appeal the SEA's final resolution to the Assistant Secretary under § 200.243.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

NOTE: Additional procedures for complaint reviews and resolutions are contained in §§ 200.240-200.248 of Subpart G (Federal Administrative Responsibilities) of this part.

§ 200.189 [Reserved]

STATE AUDITS, RESOLUTION, AND REPAYMENT

§ 200.190 State audits.

(a) Scope of State audits. A State shall provide for audits of each agency in that State that receives Title I assistance. At a minimum, these audits must determine—

(1) The fiscal integrity of the agency's financial transactions and reports that relate to the agency's use of Title I funds; and

(2) The agency's compliance with Title I requirements, including, if applicable, a review of—

(i) The selection of schools and school attendance areas for Title I projects;

(ii) The selection of children to receive Title I services;

(iii) Conformity with the approved project application;

(iv) The use of Title I funds to supplement, not supplant, non-Federal funds that would have otherwise been available;

(v) The use of Title I funds for services to children for whom the project was designed and not for general aid;

(vi) The equitable provision of Title I services for children attending private schools;

(vii) The comparability of instructional services;

(viii) The maintenance of fiscal effort; and

(ix) The use of Title I funds for excess costs.

(b) *Frequency of audits.* (1) Except as provided in paragraph (b)(2) of this section, the SEA shall schedule, at least once every three years, an audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of one or more of the following factors, that an agency or agencies may be audited less frequently:

(i) A shortage of Title I funds available for State administration of the Title I program.

(ii) The existence of large, complex Title I projects.

(iii) The geographic isolation of the agencies to be audited.

(iv) A large number of agencies to be audited.

(2) If the conditions of section 510(b) (Authorization of payments) of Title V are met, the SEA shall schedule an annual audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of the factors in paragraph (b)(1) of this section, that any agency or agencies may be audited once every two years.

(c) *Independence of auditors.* The audits required by this section must be performed by auditors who are—

(1) Employed by the State but are independent of the organizational unit that administers Title I in that State; or

(2) Employed by a private audit firm under State supervision.

(Sec. 170(a), 20 U.S.C. 2817(a); Sec. 509(a) of Title V, 20 U.S.C. 3149(a); H. Rept. 1137, 95th Cong., 2d Sess. 62 (1978); S. Rept. 856, 95th Cong., 2d Sess. 46-47 (1978))

§ 200.191 Audit resolution.

(a) An SEA shall develop and implement written procedures for resolving all findings and recommendation resulting from the audits conducted under § 200.190.

(b) The procedures referred to in paragraph (a) of this section must provide that—

(1) Within 30 days of receiving or completing a final audit report, the SEA shall send a copy of the report to the agency that was audited and that agency's district advisory council;

(2) Within 60 days of receiving a copy of the final audit report, the agency that was audited shall send a written response to the SEA concerning any findings of violations or recommendations for corrective action;

(3) Within 60 days of receiving a written response under paragraph (b)(2) of this section, the SEA shall—

(i) Send the agency that was audited and that agency's district advisory council its final determination concerning the findings and recommendations in the final audit report; and

(ii) Notify the agency that was audited of its opportunity, within 30 days of receiving the final determination, to appeal an adverse final determination to the SEA for further review under the procedures required by § 200.192.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.192 Audit appeals.

(a) An SEA shall develop and implement procedures for receiving and hearing appeals from final audit determinations that the SEA makes under § 200.191.

(b) The procedures referred to in paragraph (a) of this section must include procedures for—

(1) Informing the audited agency whether its appeal from the SEA's final determination meets reasonable filing requirements imposed by the SEA and, therefore, is accepted by the SEA for further review;

(2) Conducting hearings on the appeal;

(3) Receiving evidence and maintaining a complete record of the evidence and arguments that are presented during the appeal proceedings;

(4) Recording the SEA's final resolution of the appeal and the reason for that resolution;

(5) Notifying the agency that was audited of the SEA's final action on the appeal and any corrective action that the audited agency must take; and

(6) Notifying each agency that is ordered—as part of the SEA's final resolution of an audit appeal—to repay misspent Title I funds of its right, under section 425(b) of GEPA (relating to appeals of final SEA decisions), to appeal that order to the Secretary under § 200.193.

(c) The procedures referred to in paragraph (a) of this section must specify reasonable time limits for each step.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.193 Appeal to the Secretary.

An agency that is aggrieved by the final action of an SEA under § 200.192 may appeal the SEA's action to the Secretary. In order to appeal, the agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 170(d), 20 U.S.C. 2817(d); Sec. 509(d) of Title V, 20 U.S.C. 3149(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b-2(b))

§ 200.194 Repayment of misspent Title I funds.

(a) An LEA or State agency that is found under §§ 200.191-200.193 to have misspent Title I funds shall repay those funds to—

(1) The SEA, if the Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availabilitiy of appropriations); or

(2) The Department, if the Title I funds are no longer available for obligation under the terms of section 412(b) of GEPA.

(b) In determining the amount of Title I funds that were misspent by an LEA that, under § 200.140(c), was not required to account separately for its Title I funds, the amount of funds that are considered to be Title I funds is equal to the percentage of Title I funds used, or intended for use, for the project.

(c) The LEA or State agency shall repay the misspent funds from—

(1) Non-Federal sources; or

(2) Federal funds for which the Federal Government does not require accountablility.

(d) The LEA or State agency shall repay the misspent funds in—

(1) A single payment; or

(2) Installments over a period not more than three years from the date on which—

(i) The SEA issues its final resolution under § 200.192; or

(ii) The Secretary issues the final resolution of an appeal, if the LEA or State agency files an appeal under § 200.193.

(e) The SEA shall promptly notify the Secretary of any LEA's or State agency's refusal to repay the misspent funds.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.195 Use of misspent funds that are repaid to SEAs.

(a) If the SEA recovers funds under §200.194 during the period in which the misspent Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Title I funds and—

(1) If the agency repaying is an LEA—

(i) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in 34 CFR 201.38; or

(ii) Return the funds for proper use to the LEA from which they were received; or

(2) If the agency repaying is a State agency—

(i) Return the funds for proper use to the agency from which they were recovered; or

(ii) Return the funds to the Department.

(b) If the Title I funds that an SEA recovers under § 200.194 are no longer available for obligation under the terms of section 412(b) of GEPA, the

SEA shall return those funds to the Department.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 193(b), 20 U.S.C. 2843(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.196 Collection action by the Secretary.

(a) The Secretary initiates an action to compel repayment of funds that are found under §§ 200.191-200.193 to have been misspent if—

(1) The LEA or State agency refuses to repay misspent Title I funds under the procedures in § 200.194;

(2) The SEA has taken every reasonable action to compel repayment; and

(3) The SEA notifies the Secretary of the agency's refusal to repay.

(b) Any funds that the Secretary recovers under this section will, at the Secretary's option—

(1) Revert to the United States Treasury;

(2) Be returned to an SEA for distribution under § 200.195; or

(3) Be paid back, if appropriate, under section 456 of GEPA (Repayment to the agency of recovered funds).

(Sec. 170(e), 20 U.S.C. 2817(e); Sec. 509(e) of Title V, 20 U.S.C. 3149(e))

§§ 200.197-200.199 [Reserved]

STATE WITHHOLDING OF PAYMENTS

§ 200.200 SEA withholding of Title I payments.

(a) *General Standard.* If an SEA determines that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, as applicable, the SEA shall—

(1) Withhold further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enter into a compliance agreement under §§ 200.210-200.214.

(b) *Procedures for withholding payment.* (1) Before initiating a proceeding to withhold Title I payments to an LEA or State agency, the SEA shall determine, on a case-by-case basis, that the agency is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding funds, the SEA shall provide the LEA or State agency with—

(i) Reasonable notice of the reasons why the SEA believes that a withholding is appropriate; and

(ii) An opportunity for a hearing before an impartial decisionmaker who did not participate in the SEA's decision to initiate the withholding action.

(3) If the impartial decisionmaker finds that the LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA shall—

(i) Withhold all or merely a part of the LEA's or State agency's Title I payments. In deciding what amount to withhold, the SEA shall consider the following factors:

(A) The seriousness of the noncompliance.

(B) The amount of Title I funds involved.

(C) The effect of withholding on participating children:

(ii) Notify the agency that further Title I payments, in whole or in part, will be withheld; and

(iii) Specify a date on which the withheld funds will be reallocated under 34 CFR 201.38, unless the SEA determines that the agency is in substantial compliance.

(4) Unless the SEA enters into a compliance agreement with the LEA or State agency under §§ 200.210-200.214, the SEA shall continue to withhold Title I payments until it determines that the agency is in substantial compliance.

(c) *Suspension pending completion of withholding proceedings.* (1) If an SEA has reason to believe that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA may, after giving the LEA or State agency reasonable notice and an opportunity to show cause why suspension action should not be taken, suspend Title I payments—in whole or in part— to that agency pending completion of a withholding proceeding.

(2) In deciding whether to take suspension action, the SEA shall consider factors such as—

(i) The degree of certainty that the agency is not in substantial compliance;

(ii) The magnitude of the noncompliance;

(iii) The need to take suspension action to prevent the misuse of Title I funds; and

(iv) The harm that may result to Title I projects as a result of the suspension.

(d) *Use of withheld funds.* An SEA that withholds funds under this section shall—

(1) Pay the withheld funds to the agency from which they were withheld if that agency comes into substantial compliance within the period of time specified by the SEA; or

(2) Treat the withheld funds as excess funds for reallocation under the procedures in 34 CFR 201.38, if the agency from which they were withheld does not come into substantial compliance within the period of time specified by the SEA.

(Sec. 169(a), 20 U.S.C. 2816(a); Sec. 508(a) of Title V, 20 U.S.C 3148(a); Sec. 434(b) of GEPA, 20 U.S.C. 1232c(b))

§ 200.201 Notice of the public of SEA withholding.

If an SEA notifies an LEA or State agency that the SEA is withholding payments under § 200.200, the LEA shall, upon submission of a notice of withholding to the LEA under § 200.200(b)(2)(i), take appropriate action to inform—

(a) The district advisory council of the LEA against which the action was taken; and

(b) The general public.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(b))

§ 200.202 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.200 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b-2(b))

§§ 200.203-200.209 [Reserved]

STATE COMPLIANCE AGREEMENTS

§ 200.210 Use of a State compliance agreement.

(a) An SEA may enter into a compliance agreement with an LEA or State agency instead of initiating or continuing a withholding action under § 200.200.

(b) The SEA may enter into the compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.200; or

(2) At any stage of a withholding action under § 200.200, including—

(i) Before providing the LEA or State agency with an opportunity for the hearing required under § 200.200(b);

(ii) During the hearing provided under § 200.200(b);

(iii) After a finding under § 200.200(b)(3) that the LEA or State agency is not in substantial compliance with the requirements of this part or of 34 CFR Parts 201, 302, or 203; or

(iv) During the course of withholding of Title I funds by the SEA.

(c) A compliance agreement entered into under this section—

(1) Applies only to current violations;

(2) Relieves the LEA or State agency that enters into the agreement of any liability for repayment of funds that are spent—

(i) In violation of a requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by an LEA or State agency; and

(ii) A schedule for repaying those misspent funds under § 200.194.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent prior to the date on which the agreement was entered into, including funds that were spent in violation of the maintenance of effort requirements in § 200.90.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C 3148(c))

§ 200.211 Contents of a State compliance agreement.

A compliance agreement entered into under § 200.210 must—

(a) Be a written agreement signed by authorized representatives of the SEA and authorized representatives of the LEA or State agency;

(b) Include a statement of each applicable requirement that the LEA or State agency is violating;

(c) Describe the activity that is in violation of each applicable requirement;

(d) Describe the steps that the LEA or State agency agrees to take in order to come into full compliance with each applicable requirement;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.200, if the SEA has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance by the LEA or State agency; and

(g) Specify a time period of not more than 90 days during which the LEA or State agency shall take steps that will result in full compliance with the requirements involved.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.212 Duration of a State compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.210 remains in effect for the period of time that is specified in the agreement. In any case, however, that time may not exceed 90 days after the agreement is entered into.

(b) If the LEA or State agency that has entered into a compliance agreement under § 200.210 fails to comply with the terms of the agreement, the agreement expires immediately.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.213 Effect of expiration of a State compliance agreement.

(a) If a compliance agreement has expired under § 200.212(b), an SEA may not enter into another compliance agreement with the same LEA or State agency for any violations that were addressed in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.212(b) and the LEA or State agency continues to be out of compliance, the withholding procedures in § 200.200 apply. However, in taking any withholding action under § 200.200, the SEA shall take into account any partial compliance that was achieved by the LEA or State agency under the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.214 Notice of a State compliance agreement.

Within 15 days of entering into a compliance agreement under § 200.210, the SEA shall send a copy of the compliance agreement to—

(a) The Assistant Secretary;

(b) The district advisory council of the agency that entered into the compliance agreement with the SEA, if that agency has a district advisory council; and

(c) Each person, agency, or organization that filed a complaint with the LEA, State agency, or SEA concerning a violation covered by the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§§ 200.215–200.219 [Reserved]

Subpart G—Federal Administrative Responsibilities

APPLICATION APPROVAL

§ 200.220 Approval of State applications and annual program plans.

(a) *Approval of State applications.* The Secretary approves the payment of Title I funds by an SEA to LEAs and State agencies if the Secretary has made specific findings, in writing, that—

(1) The application that the SEA has submitted under § 200.20 complies with—

(i) The requirements in § 200.20;

(ii) The Title I statute and regulations;

(iii) All applicable requirements in GEPA; and

(iv) All applicable requirements in EDGAR;

(2) The SEA will comply with the assurances in its application and those submitted by the SEA under section 435(b) of GEPA (containing specific assurances required in the SEA's application); and

(3) The SEA's monitoring and enforcement plan meets the requirements in § 200.21.

(b) *Approval of SEA annual program plans for programs serving migratory children.* The Secretary approves the payment of Title I funds to an SEA for a project for migratory children of migratory agricultural workers of fishers only if the Secretary has, under the procedures in 34 CFR 204.14, approved the SEA's annual program plan.

(Sec. 142, 20 U.S.C. 2762; Sec. 182, 20 U.S.C. 2832)

§ 200.221 Opportunity for a hearing on disapproval of a State application.

(a) If the Secretary determines that an SEA's application does not comply with the requirements in § 200.220(a), the Secretary—

(1) Notifies the SEA, in writing, of the facts on which the Secretary bases that determination; and

(2) Provides the SEA with the opportunity for a hearing to be held at least 30 days after the SEA receives notice.

(b) A hearing conducted under paragraph (a) of this section is held before the Education Appeal Board in accordance with—

(1) The requirements in section 451(e) of GEPA (relating to the Board's proceedings); and

(2) The Board's procedures in 34 CFR Part 78.

(c) The Education Appeal Board issues an initial decision that the Board Chairperson—

(1) Submits to the Secretary; and

(2) Sends to each party by certified mail with a return receipt requested.

(d) The decision by the Education Appeal Board becomes final unless, within 60 days after the SEA receives written notice of the decision—

(1) The Secretary, for good cause shown, modifies or sets aside the decision, in whole or in part. In that case, the modified decision becomes final 60 days after the Secretary's action; or

(2) The SEA files a petition for judicial review under section 455 of GEPA (Judicial review provision).

(Sec.182(b), 20 U.S.C. 2832(b); Sec. 453(b) of GEPA, 20 U.S.C. 1234b(b))

§§ 200.222–200.229 [Reserved]

EVALUATION

§ 200.230 Secretary's evaluation procedures.

Under section 183 (Program evaluation) of Title I, the Secretary—

(a) Provides for independent evaluations of Title I projects;

(b) Develops evaluation standards and a schedule for conducting evaluations;

(c) Consults with LEAs and State agencies concerning jointly sponsored objective evaluation programs;

(d) Provides SEAs with models for the evaluation of Title I projects for use by LEAs and State agencies;

(e) Reports to the Congress concerning the results of evaluations of Title I projects;

(f) Provides technical assistance to SEAs to enable them to assist LEAs and State agencies in conducting evaluations of Title I projects; and

(g) Develops a system for—

(1) Gathering and disseminating the results of evaluations of Title I projects;

(2) Identifying exemplary Title I projects and particularly effective elements of Title I projects; and

(3) Disseminating information concerning the exemplary Title I projects and particularly effective elements of Title I projects to—

(i) LEAs and State agencies responsible for designing and operating Title I projects;

(ii) The education profession; and

(ii) The general public.

(Sec. 183, 20 U.S.C. 2833)

§§ 200.231-200.239 [Reserved]

COMPLAINT REVIEW AND RESOLUTION

§ 200.240 Contents of a complaint.

The required contents of a complaint are described in § 200.180.

(Sec.128, 20 U.S.C. 2738; Sec. 168, 20 U.S.C. 2813; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.241 Procedures for receiving direct complaints.

A direct complaint is a complaint that—

(a) Has not been resolved by an LEA, State agency, or SEA under the procedures in §§ 200.180-200.188; and

(b) Is filed with the Assistant Secretary for Elementary and Secondary Education.

(Sec.184, 20 U.S.C. 2834)

§ 200.242 Procedures for handling direct complaints.

(a) *Standards for resolving direct complaints.* The Assistant Secretary designates an official of the Department to take action under paragraph (b) of this section to resolve a direct complaint. The designated official takes this action only if one or more of the following conditions exists:

(1) The information contained in the direct complaint shows that—

(i) Delayed resolution of the direct complaint will result in serious and immediate harm to the complainant or to the program beneficiaries; and

(ii) The complainant will probably succeed on the merits of the complaint.

(2) The direct complaint has previously been filed with an LEA, State agency, or SEA and that agency has failed to resolve the complaint within the time specified in § 200.184 or § 200.187.

(3) The SEA or LEA has implemented a policy or practice that violates a Title I requirement and the LEA, the SEA, or both has acknowledged this fact, but refuses or fails to correct the noncompliant practice.

(4) The designated official determines that Federal resolution of the complaint is appropriate for any other reason.

(b) *Procedures for resolving direct complaints.* If the designated official determines that the direct complaint meets the standards in paragraph (a) of this section, the designated official resolves the complaint under the procedures in § 200.245.

(c) *Referral to an SEA.* If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and the complaint has not already been filed with an LEA, State agency, or SEA, the designated official within 30 days after receiving the direct complaint, refers it to the appropriate SEA for resolution under the procedures in §§ 200.180-200.188.

(d) *Deferral pending resolution by another agency.* (1) If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and if the complaint has been filed with and is pending before an LEA, State agency, or SEA, the designated official defers taking any action on the direct complaint pending resolution of the complaint by the LEA, State agency, or SEA.

(2) However, if the LEA, State agency, or SEA fails to resolve the complaint within the time specified in § 200.184 or § 200.187, the complainant may file with the designated official an amended direct complaint that specifically shows that failure.

(Sec. 184, 20 U.S.C. 2834)

§ 200.243 Appeals from final resolutions by SEAs.

(a) *Who may appeal.* Any person, agency, or organization that has filed an appeal or complaint with an SEA and is dissatisfied with the SEA's final resolution of that appeal or complaint under § 200.188 may appeal the SEA's final resolution to the Assistant Secretary for review.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the party that files the appeal receives a copy of the SEA's final resolution.

(c) *Where to file an appeal.* The appeal must be—

(1) Designated "Title I Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an appeal.* The appeal must—

(1) Be written and signed;

(2) Include a copy of the complaint, the resolution of the complaint, the appeal to the SEA, the SEA's final resolution, and any other documents that the appellant relies on in the appeal;

(3) Identify those parts of the SEA's final resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(4) Indicate what remedy the party that files the appeal is seeking from the Assistant Secretary.

(Sec. 168, 20 U.S.C. 2815; Sec. 184, 20 U.S.C. 2834; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.244 Preliminary review of appeals.

(a) *Review of appeals.* The Assistant Secretary designates an official of the Department to review an appeal filed under § 200.243 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of appeals.* (1) If the designated official determines that the appeal does not meet the requirements in § 200.243, the designated official notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is dismissed.

(2) Each notice of dismissal includes reasons why the designated official determined that the appeal did not meet the requirements in § 200.243.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.245 begin upon receipt of that revised appeal.

(c) Acceptance of appeals. If the designated official determines that the appeal meets the requirements of § 200.243, the designated official—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal has been accepted for review; and

(2) Resolves the appeal under the procedures in § 200.245.

(Sec. 184, 20 U.S.C. 2834)

§ 200.245 The designated official's procedures for resolving direct complaints and appeals.

(a) *Gathering of information by the designated official.* If a direct complaint is accepted for review under § 200.242 or if an appeal is accepted for review under § 200.244, the designated official—

(1) Notifies the complainant or the appellant, the SEA, and any other agency or organization defending the complaint or appeal that each has 20 days from the date on which the notice is postmarked to submit any relevant written evidence or argument;

(2) Provides an opportunity for the complainant or the complainant's representative, or both, to present relevant oral evidence, including an opportunity to question the parties and their witnesses, if the designated official determines that this presentation is appropriate; and

(3) Conducts whatever research and investigations that the designated official considers to be appropriate. These may include an on-site investigation.

(b) *Resolution by the designated official*—(1) *Time period for resolution.* The designated offical issues a written resolution of each complaint or appeal within 60 days of receiving the complaint or appeal, unless there are exceptional circumstances that justify additional time. Examples of the types of factors that the designated official may consider in determining the existence of exceptional circumstances include—

(i) The need to conduct a major on-site investigation;

(ii) The need to conduct a comprehensive audit; or

(iii) The complexity of the issues raised by the complaint or appeal.

(2) *Contents of the resolution.* Each resolution that the designated official issues under this section includes—

(i) A statement of the resolution and the reasons for that resolution; and

(ii) Notice of the right of the complainant or appellant, the SEA, or any other agency or organization defending the complaint or appeal to appeal that resolution for review by the Assistant Secretary under § 200.246.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the complainant or appellant, the designated official sends a copy of the resolution to the complainant's or appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(Sec. 184, 20 U.S.C. 2834)

§ 200.246 Administrative appeals from the designated official's resolution.

(a) *Who may file an administrative appeal.* Any complainant or appellant, or other party to a complaint or an appeal, who is dissatisfied with the designated official's resolution of that complaint or appeal under § 200.245 may file an administrative appeal with the Assistant Secretary.

(b) *When to file an administrative appeal.* The administrative appeal must be postmarked within 30 days after the party that files the appeal receives a copy of the designated official's resolution.

(c) *Where to file an administrative appeal.* The administrative appeal must be—

(1) Designated "Title I Administrative Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an administrative appeal.* The administrative appeal must—

(1) Be written and signed;

(2) Identify those parts of the designated official's resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(3) Indicate what remedy the party who files the appeal is seeking from the Assistant Secretary.

(Sec. 184, 20 U.S.C 2834)

§ 200.247 Preliminary review of administrative appeals.

(a) *Review of administrative appeals.* The Assistant Secretary reviews an administrative appeal filed under § 200.246 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of administrative appeals.* (1) If the Assistant Secretary determines that the administrative appeal does not meet the requirements of § 200.246, the Assistant Secretary notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal is dismissed.

(2) Each notice of dismissal includes reasons by the Assistant Secretary determined that the administrative appeal did not meet the requirements of § 200.246.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.248 begin upon receipt of that revised appeal.

(c) *Acceptance of administrative appeals.* If the Assistant Secretary determines that the administrative appeal meets the requirements of § 200.246, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal has been accepted for review; and

(2) Resolves the administrative appeal under the procedures in § 200.248.

(Sec. 184, 20 U.S.C. 2834)

§ 200.248 The Assistant Secretary's procedures for resolving administrative appeals.

(a) *Procedures for considering the administrative appeal.* If an administrative appeal is accepted for review under § 200.247, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is accepted; and

(2) May provide the opportunity for additional arguments concerning the administrative appeal.

(b) *Resolution by the Assistant Secretary*—(1) *Time period for resolution.* (i) Unless exceptional circumstances exist, the Assistant Secretary issues a written resolution of an administrative appeal within 60 days.

(ii) Exceptional circumstances may include—

(A) The need to conduct a major onsite investigation;

(B) The need to conduct a comprehensive audit; or

(C) The need to gather additional information.

(2) *Contents of the resolution.* The resolution that the Assistant Secretary issues under this section includes a statement of the resolution and the reasons for the resolution.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the appellant, the Assistant Secretary sends a copy of the resolution to the appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(4) *Final action of the Department.* The Assistant Secretary's final resolution under paragraph (b) of this section is the Department's final action concerning the appeal.

(Sec. 184, 20 U.S.C. 2834)

§ 200.249 [Reserved]

AUDITS AND AUDIT RESOLUTION

§ 200.250 Audits by the Inspector General.

The Inspector General provides for audits of grants or subgrants made under Title I to determine, at a minimum—

(a) The fiscal integrity of the audited agency's financial transactions and reports; and

(b) The audited agency's compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

(Sec. 185(a), 20 U.S.C. 2835(a))

§ 200.251 Audit resolution procedures.

The Secretary's procedures for resolving findings and recommendations that result from audits conducted under § 200.250 provide for—

(a) Submission of a draft audit report by the auditors to the audited agency;

(b) Opportunity for the audited agency to comment to the auditors on the findings and recommendations in the draft audit report;

(c) Submission of the final audit report by the auditors to the audited agency;

(d) Opportunity for the Assistant Secretary, at his discretion, to request additional information from the audited agency;

(e) Issuance of final audit determinations by the Assistant Secretary to the audited agency in a final determination letter that—

(1) Identifies the improper expenditures;

(2) Indicates the reasons for the final audit determination in sufficient detail—for example, by referring to the relevant parts of a separate document such as the audit report—to allow the audited agency to respond in an appeal under paragraph (e)(3)(ii) of this section;

(3) Advises the audited agency that it shall—

(i) Repay the misspent funds to the department; or

(ii) Within 30 calendar days of receiving the final determination letter, file an appeal for review by the Education Appeal Board under the procedures in 34 CFR Part 78; and

(4) Is sent by certified mail with a return receipt requested; and

(f) Review by the Secretary of the Education Appeal Board's initial decision.

(Sec. 185(b), 20 U.S.C. 2835(b))

§ 200.252 Judicial review of audit resolutions.

If a State is dissatisfied with the Secretary's final action under § 200.251, the State may, within 60 days of receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2851)

§§ 200.253-200.259 [Reserved]

WITHHOLDING OF PAYMENTS

§ 200.260 Withholding of Title I payments.

(a) *General standard.* If the Secretary determines that an SEA is not in substantial compliance with the assurances it made in its application for Title I funds, the Secretary—

(1) Withholds further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enters into a compliance agreement with the SEA under §§ 200.270-200.275.

(b) *Secretary's procedures for withholding payments.* (1) Before initiating a proceeding to withhold Title I payments to an SEA, the Secretary determines, on a case-by-case basis, that the SEA is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding Title I funds, the Secretary provides the SEA with—

(i) Written notice of the Secretary's intent to withhold funds. The written notice—

(A) States the reasons why the SEA is not in substantial compliance with the assurances in its application;

(B) Cites the Title I requirements that are the basis for the alleged failure to comply;

(C) Notifies the SEA of the opportunity for a hearing on the record; and

(D) Is sent by certified mail with a return receipt requested; and

(ii) The opportunity for a hearing on the record.

(3) (i) Following the hearing referred to in paragraph (b)(2)(ii) of this section, the hearing officer issues a decision that the hearing officer—

(A) Submits to the Secretary; and

(B) Sends to each party by certified mail with a return receipt requested;

(ii) Unless the Secretary, for good cause shown, modifies or sets aside that decision, in whole or in part, within 60 days after the SEA receives written notice of the decision, it becomes the final decision of the Department.

(iii) If the Secretary modifies or sets aside the hearing officer's decision, the decision, as modified or set aside, becomes the final decision of the Department 60 days after the Secretary's action.

(4) If, under the procedures in this section or § 200.262, the SEA is not found to be in substantial compliance with the assurances in its application, the Secretary notifies the SEA that—

(i) Further Title I payments will not be made to the State;

(ii) The SEA shall limit Title I payments to those LEAs and State agencies that were not involved in the failure to comply; or

(iii) The SEA shall reduce Title I payments to particular LEAs or State agencies contributing to the SEA's noncompliance. In that case, the partial payments are subject to additional conditions that the Secretary considers appropriate in light of the noncompliance.

(5) If the Secretary does not enter into a compliance agreement with the SEA under §§ 200.270-200.275, the Secretary continues to withhold Title I payments until the Secretary determines that the SEA is in substantial compliance.

(Sec. 186(a), 20 U.S.C. 2836(a); Sec. 453(d) of GEPA, 20 U.S.C. 1234b(d))

§ 200.261 Suspension of Title I payments pending completion of withholding proceedings.

(a) The Secretary may suspend Title I payments to an SEA pending completion of a withholding action under § 200.260(b) if—

(1) The SEA is in substantial and continuing noncompliance with the assurances it made in its application for Title I funds; and

(2) The Secretary follows the procedures in paragraph (b) of this section.

(b) Before suspending Title I payments to an SEA, the Secretary provides the SEA with—

(1) Written notice of the intent to suspend payments during the course of the witholding proceedings. The notice—

(i) Indicates the reasons for the suspension;

(ii) Notifies the SEA that the suspension will be effective 10 days after the SEA receives the written notice, unless within those 10 days the SEA submits a written request to the Secretary for an opportunity to show cause why the suspension action should not be taken; and

(iii) Is sent by certified mail with a return receipt requested; and

(2) An opportunity to appear at a hearing to show cause why the proposed suspension action should not be taken, including an opportunity to present arguments concerning—

(i) The lack of necessity for the suspension of payments;

(ii) Possible factual errors in the Secretary's written notice of intent to withhold funds under § 200.260(b);

(iii) The nature of the violation charged in the written notice of intent to withhold; and

(iv) Hardship that may result from the proposed suspension.

(Sec. 186(a), 20 U.S.C. 2836(a); 34 CFR Part 78)

§ 200.262 Judicial review of withholding actions.

If an SEA is dissatisfied with the Secretary's final action under § 200.260(b), the SEA may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2851)

§ 200.263 Notice to the public of the Secretary's withholding.

If the Secretary notifies an SEA that the Secretary is withholding Title I payments under § 200.260, the Secretary takes appropriate action to inform the public within that State of the withholding.

(Sec. 186(b), 20 U.S.C. 2836(b))

§§ 200.264-200.269 [Reserved]

FEDERAL COMPLIANCE AGREEMENTS

§ 200.270 Use of a Federal compliance agreement.

(a) The Secretary may enter into a compliance agreement with an SEA instead of initiating or continuing a withholding action under § 200.260.

(b) The Secretary may enter into a compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.260; or

(2) At any stage during a withholding action under § 200.260, including—

(i) Before providing the SEA with an opportunity for the hearing on the record that is required under § 200.260;

(ii) During the hearing on the record provided under § 200.260;

(iii) After a decision by the hearing officer or the Secretary under § 200.260 that the SEA is in substantial noncompliance with the assurances in its Title I application; or

(iv) During the course of a withholding of Title I funds by the Secretary.

(c) A compliance agreement entered into under this section—

(1) Applies only to current noncompliance;

(2) Relieves the SEA that enters into the agreement of any liability for repayment of funds that are spent by the SEA—

(i) In violation of a Title I requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by the SEA; and

(ii) A schedule for repaying those misspent funds.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent before the date on which the compliance agreement was entered into, including funds that were spent in violation of the maintenance of effort requirement in § 200.90.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.271 Contents of a Federal compliance agreement.

A compliance agreement that is entered into under § 200.270 must—

(a) Be a written agreement signed by an authorized representative of the SEA;

(b) Include a statement of each requirement that is covered by the agreement;

(c) Summarize the activity that is in violation of each requirement;

(d) Describe the steps that the SEA—and, if applicable, the LEA or State agency—agrees to take in order to come into full compliance with each requirement that is involved;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.260, if the Secretary has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance with the Title I requirements involved; and

(g) Specify a time period, determined by the Secretary under § 200.272, during which the SEA—and, if applicable, the LEA or State agency—shall take steps that will result in full compliance.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.272 Time period for coming into compliance under a Federal compliance agreement.

(a) Except as provided in paragraphs (b) through (d) of this section, each compliance agreement entered into under § 200.270 must require steps that result in immediate full compliance with all Title I requirements. For purposes of this section, "immediate" means within 90 days after entering into the agreement.

(b) If an SEA that desires to enter into a compliance agreement under § 200.270 submits a written allegation that immediate full compliance is not feasible, the Secretary's designee holds a hearing concerning the feasibility of immediate full compliance and the time required to achieve full compliance.

(c) At each hearing conducted under paragraph (b) of this section—

(1) The SEA has the burden of showing that it is not feasible for the SEA to come into full compliance with all Title I requirements until a future date;

(2) Parents, their representatives, and other interested persons or organizations have an opportunity to participate.

(d) After a hearing has been conducted under paragraph (c) of this section, the Secretary may enter into a compliance agreement under § 200.270 that specifies a period of more than 90 days for the SEA to achieve full compliance with the Title I requirements involved if—

(1) Before entering into a compliance agreement that specifies a period of more than 90 days for the SEA's coming into compliance, the Secretary makes written findings that it is not genuinely feasible for the SEA to come into immediate compliance with the Title I requirements involved; and

(2) The compliance agreement specifies, for coming into full compliance with the Title I requirements involved, a period of time that the Secretary has determined to be reasonable.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.273 Duration of a Federal compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.270 remains in effect for the time period determined under § 200.272 and specified in the agreement for the SEA to come into full compliance.

(b) If the SEA that has entered into a compliance agreement under

§ 200.270 fails to comply with the terms of that agreement, the agreement expires immediately.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.274 Effect of expiration of a Federal compliance agreement.

(a) If a compliance agreement has expired under § 200.273, an SEA may not enter into another compliance agreement with the Secretary for any violations that were covered in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.273(b) and the SEA continues to be out of compliance, the withholding procedures in § 200.260 apply. However, in taking any withholding action under § 200.260, the Secretary takes into account any partial compliance that was achieved by the SEA under the compliance agreement.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.275 Notice of a Federal compliance agreement.

(a) Within 15 days of entering into a compliance agreement under § 200.270, the Secretary sends a copy of the agreement to each organization or person that has filed a complaint with the Department concerning any noncompliance covered by that agreement.

(b) A compliance agreement that is entered into under § 200.270 is subject to disclosure under 5 U.S.C. 552.

(Sec. 186(c)(3), 20 U.S.C. 2836(c)(3))

§§ 200.276-200.279 [Reserved]

CEASE AND DESIST PROCEEDINGS

§ 200.280 Procedures for issuing cease and desist orders.

(a) If the Secretary has reason to believe that a State or LEA is not in substantial compliance with any applicable Title I requirements, the Secretary may issue and serve upon the State or LEA a complaint that—

(1) States the charges indicating that the State or LEA is not in substantial compliance;

(2) Cites the requirements that are the basis for the alleged noncompliance; and

(3) Contains a notice of a hearing to be held before the Education Appeal Board at least 30 days after the agency receives the complaint.

(b) Each State or LEA that receives a complaint under paragraph (a) of this section has the right to appear before a Panel of the Education Appeal Board on the specified date to show cause why the Board should not, under the procedures in 34 CFR Part 78, issue an order that requires the State or LEA to cease and desist from the violation charged in the complaint.

(c) If, after the hearing referred to in paragraph (b) of this section, the Panel of the Education Appeal Board decides that the State or LEA has violated a legal requirement charged in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues an order to cease and desist from the practice, policy or procedure that resulted in the violation.

(d) The report and order of the Education Appeal Board are final 60 days after the State or LEA receives copies of them unless the State or LEA files a petition for judicial review under § 200.281.

(Sec. 454 of GEPA, 20 U.S.C. 1234c; 34 CFR Part 78)

§ 200.281 Judicial review of cease and desist orders.

If a State or LEA is dissatisfied with the Education Appeal Board's final report and order under § 200.280, the State or LEA may, within 60 days after receiving copies of them, file a petition for review with the United States court of appeals for the circuit in which the State or LEA is located within that 60 day period.

(Sec. 455 of GEPA, 20 U.S.C. 1234d)

§ 200.282 Enforcement of cease and desist orders.

The Secretary may enforce the cease and desist order by—

(a) Withholding any portion of the Title I payments including payments for State administrative costs, to the State or LEA against which the final order has been issued; or

(b) Certifying the facts to the Attorney General who initiates appropriate proceedings to enforce the order.

(Sec. 454(e) of GEPA, 20 U.S.C. 1234(c)(e))

§§ 200.283-200.289 [Reserved]

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.
201.1 Purpose of Title I grants to LEAs.
201.2 Applicability of the regulations in Part 201.
201.3 Applicability of other statutes and regulations.
201.4 Definitions.
201.5-201.9 [Reserved]

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

BASIC GRANTS

201.10 Eligibility of LEAs for basic grants.
201.11 Determination by the Secretary of basic grants.
201.12 Allocation of county aggregate amounts by SEAs.
201.13 Exceptions to county aggregate amounts.
201.14 Distribution of an additional amount based on the survey of income and education.
201.15 Allocation of Title I funds among project areas and project schools.
201.16-201.19 [Reserved]

SPECIAL INCENTIVE GRANTS

201.20 Eligibility for special incentive grants.
201.21 State entitlements.
201.22 LEA entitlements.
201.23 Method of making special incentive grants.
201.24 Use of special incentive grant funds.
201.25-201.29 [Reserved]

CONCENTRATION GRANTS

201.30 States entitled to receive concentration grant funds.
201.31 Amount of concentration grant funds that each State receives.
201.32 Allocation of concentration grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

Sec.
201.33 Allocation of concentration grant funds to counties within a State in which no county meets the statutory eligibility criteria.
201.34 Submission of allocation plans.
201.35 Secretary's standards for approval of allocation plans.
201.36 Method of awarding concentration grant funds.
201.37 Use of concentration grant funds.

REALLOCATION

201.38 Reallocation of Title I funds by SEAs.
201.39 Reallocation of Title I funds by the Secretary.

Subpart C—Applying to the State for Title I Funds

201.40 LEAs that may receive Title I assistance.
201.41 Submission of Title I project applications to the SEA.
201.42-201.49 [Reserved]

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

IDENTIFYING ELIGIBLE SCHOOLS AND SCHOOL ATTENDANCE AREAS

201.50 Overview of the regulations in this subpart.
201.51 Identifying eligible schools attendance areas.
201.52 Identifying eligible schools.
201.53-201.59 [Reserved]

SELECTING SCHOOLS AND SCHOOL ATTENDANCE AREAS FOR TITLE I PROJECTS

201.60 Overview of the process of selecting school attendance areas and schools for Title I projects.
201.61 Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.
201.62 Selecting project schools from among the schools that the LEA identified as eligible schools.
201.63 Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.
201.64 Continuation of eligibility for certain school attendance areas or schools.
201.65 Skipping higher-ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.

Sec.
201.66 Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.
201.67-201.69 [Reserved]

Subpart E—Identifying and Selecting Children To Be Served

201.70 General rules for identifying eligible children and selecting children to be served.
201.71 Special rules for identifying and selecting children to be served.
201.72 Use of Title I funds for a schoolwide project.
201.73 Required plan for each school selected for a schoolwide project.
201.74 Financial requirements for a schoolwide project.
201.75 Serving children in local institutions for neglected or delinquent children.
201.76-201.79 [Reserved]

Subpart F—Participation of Children Enrolled in Private Schools

GENERAL REQUIREMENTS

201.80 Required opportunity for participation of private school children in Title I projects.
201.81 Determining the eligibility of private school children.
201.82 Prohibition concerning noninstructional duties.
201.83-201.89 [Reserved]

BY-PASS PROVISIONS

201.90 General standard for by-pass actions.
201.91 Secretary's procedures for by-pass actions.
201.92-201.93 [Reserved]
201.94 Judicial review of by-pass actions.
201.95 Effect of a by-pass action.
201.96 Withholding funds pending final resolution of a by-pass action.
201.97 Continuation of the by-pass until the LEA complies.
201.98-201.99 [Reserved]

Subpart G—Needs Assessment

201.100 Purpose of the required assessment of educational need.
201.101 Identification of educationally deprived children.
201.102 Identification of general instructional areas and needs.
201.103 Selection of children to participate in a project.
201.104 Determination of the special educational needs of participating children.
Sec.
201.105 Establishment of educational objectives and instructional strategies.
201.106-201.109 [Reserved]

Subpart H—Fiscal Requirements

MAINTENANCE OF EFFORT

201.110 Maintenance of effort requirement.

EXCESS COSTS

201.111 Excess costs requirement.

COMPARABILITY

201.112 Basic standards for determining comparability of services.
201.113 Submission of comparability reports.
201.114 Data to be included in a comparability report.
201.115 The date on which the data included in the comparability report must be collected.
201.116 Criteria for determining comparability of services.
201.117 Grouping schools by corresponding grade levels.
201.118 Exclusions from the excess costs and comparability requirements.
201.119 Required annual assurance.
201.120 Maintaining comparability.
201.121 Comparability data must be for the same date.
201.122 Retention of records concerning comparability.
201.123 Actions to be taken by an SEA if an LEA violates the comparability requirements.
201.124 Amount of funds that an SEA shall refund for a violation of the comparability requirement.
201.125 SEA reports to the Secretary.
201.126-201.129 [Reserved]

SUPPLEMENT, NOT SUPPLANT: GENERAL

201.130 Introduction.
201.131 Definitions.
201.132 Assurance of equal opportunity.

SUPPLEMENT, NOT SUPPLANT: REGULAR STATE AND LOCAL FUNDS AND STATE AND LOCAL FUNDS FOR STATE PHASE-IN PROGRAMS

201.133 Introduction.
201.134 Equitable distribution: Regular funds and funds for State phase-in programs.
201.135 Provision of services required by law: Regular funds and funds for State phase-in programs.

SUPPLEMENT, NOT SUPPLANT: SPECIAL STATE AND LOCAL PROGRAMS

201.136 Introduction.

Sec.
201.137 Equitable distribution: Special State and local programs.
201.138 Procedures for determining proportionate share.
201.139 Provision of services required by law: Special State and local funds (General).
201.140 Provision of services required by law: Special State and local programs (Handicapped children).
201.141 Provision of services required by law: Special State and local programs (children whose primary or home language is other than English).
201.142 Provision of services required by law: Special State and local programs (Compensatory education or other services required by State or local law).
201.143 Coordination.
201.144 Prohibition against considering Title I funds in determining State aid.
201.145-201.149 [Reserved]

Subpart I—Parental Involvement

201.150 Purpose of advisory councils.
201.151 Advisory councils that LEA's shall establish.
201.152 Composition of membership on district advisory councils.
201.153 Models for nominating and electing district advisory councils.
201.154 Procedures for electing district advisory councils.
201.155 Required project area advisory councils and project school advisory councils.
201.156 Membership of project area advisory councils and project school advisory councils.
201.157 Procedures for electing project area advisory councils and project school advisory councils.
201.158 An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.
201.159 Participation by advisory councils.
201.160 Information that an LEA shall provide to advisory councils.
201.161 Training for members of advisory councils.
201.162 Allowable expenditures for advisory councils.
201.163-201.169 [Reserved]

Subpart J—Evaluations by Local Educational Agencies

201.170 General evaluation requirements.
201.171 Standards for evaluation by an LEA.
201.172 Use of models by an LEA.
201.173 Model requirements.
201.174 Alternative models.
201.175 Frequency of LEA evaluations.

Sec.
201.176 Reports of evaluation results.
201.177 Allowable costs for evaluation.
201.178-201.179 [Reserved]

AUTHORITY: Sec. 101-198 of the Elementary and Secondary Education Act of 1965, as amended by Public Law 95-561 (20 U.S.C. 2701-2854), unless otherwise noted.

SOURCE: 46 FR 5160, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 201.1 Purpose of Title I grants to LEAs.

Under Title I of the Elementary and Secondary Education Act of 1965, as amended, the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children in areas with concentrations of children from low-income families; and

(b) Children in local institutions for neglected or delinquent children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.2 Applicability of the regulations in Part 201.

The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Title I.

(Sec. 101-198, 20 U.S.C. 2701-2854)

§ 201.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to projects for which the Secretary provides financial assistance to LEAs under Title I:

(a) The Title I statute in 20 U.S.C. 2701 et seq.

(b) The Title I regulations in 34 CFR Part 200 that apply to all programs authorized under Title I.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(d) The Education Department General Administrative Regulations (EDGAR) in—

(1) 34 CFR Part 76 (State-Administered programs);

(2) 34 CFR Part 77 (General); and

(3) 34 CFR Part 78 (Education Appeal Board).

(Sec. 101-198, 20 U.S.C. 2701-2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, 78)

§ 201.4 Definitions.

(a) The following terms that are used in this part are defined in 45 CFR Part 200:

Applicant
Application
Assistant Secretary
Average daily attendance
Average daily membership
Average per pupil expenditure
Cease and desist
Children
Construction
County
Current expenditures
Department
Elementary school
Equipment
Fiscal Year
Free public education
Grant period
Local educational agency
Parent
Participating children
Preschool children
Project
Project period
Public
School facilities
Secondary school
Secretary
State
State agency
State educational agency
Suspension
Title I
Title IV
Title V
Withholding

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this part:

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Eligible school" means a school in which a sufficiently high concentration of children from low-income families is enrolled so that, under the procedure in § 201.52, the school is eligible for services supported with Title I funds.

"Eligible school attendance area" means a school attendance area in which a sufficiently high concentration of children from low-income families resides so that, under the procedures in § 201.51, the school attendance area is eligible for services supported with Title I funds.

"Institution for delinquent children" means a public or private residential facility that is operated primarily for the care of at least 10 children who have been adjudicated delinquent or in need of supervision. The term also includes an adult correctional institution in which at least 10 children reside.

"Institution for neglected children" means a public or private residential facility—other than a foster home—that is operated primarily for the care of at least 10 children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, or neglect by, or death of, parents.

"Instructional staff"—

(1) Means staff members who provide instruction to children or who assist or supervise those staff members who provide instruction;

(2) Includes teachers, principals, consultants, supervisors of instruction, librarians, guidance, and psychological personnel; and

(3) Includes aides, clerical personnel, and other para-professionals who are employed to assist other instructional staff members providing instructional services.

"Participating school" means a "project school" as defined in this section.

"Project area" means a school attendance area in which a high concentration of children from low-income families resides, and that is selected by an LEA, under the procedures in § 201.61 and §§ 201.63-201.66, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Title I project.

"Project school" means an eligible school that is selected by an LEA, under the procedures in §§ 201.62-201.65, as a school in which children are to be selected to participate in a

Title I project and to receive services supported with Title I funds.

"School attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 201.5–201.9 [Reserved]

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

BASIC GRANTS

§ 201.10 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Title I grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under section 111(c) (Children to be counted) of Title I in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under section 111(c) of Title I.

(b) The Secretary allocates Title I funds appropriated under section 111(a)(1) (relating to authorized appropriations) of Title I among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Title I funds.

(Sec. 111(a), 20 U.S.C. 2711(a); Sec. 111(b), 20 U.S.C. 2711(b); Sec. 111(c), 20 U.S.C. 2711(c))

§ 201.11 Determination by the Secretary of basic grants.

(a) If satisfactory census data are available from the Department of Commerce, the Secretary determines the amount of the basic Title I grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b) (1) If satisfactory census data are not available from the Department of Commerce for LEAs, the Secretary determines the "county aggregate" amount of Title I basic grant funds that all LEAs in a county are eligible to receive under the method in sections 111(a)(2)(B) (relating to amounts when data are not available) and 111(c) of Title I.

(2) The "county aggregate" amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in section 111(c)(2)(B) (relating to determining numbers of children) of Title I—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I for purposes of a grant to a State agency.

(c) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under Title I basic grants, the Secretary ratably reduces, using the procedures in section 193 (Adjustments where necessitated by appropriations) of Title I, the amount available to each LEA or county.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.12 Allocation of county aggregate amounts by SEAs.

Except as provided in § 201.13, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 201.11, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2) and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) To the extent that the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 201.11 is made, on the most recent reliable data available at the time of the determination.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families*—(1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner as it determines will best carry out the purposes of Title I.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA shall—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom each surviving LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(iv) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Title I funds generated by fewer than 10 children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.13 Exceptions to county aggregate amounts.

(a) If a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority in any fiscal year to make, directly to LEAs without regard to the county aggregate amounts, the basic grant allocations under § 201.12 and the special incentive grant allocations under §§ 201.20-201.24.

(b) If the Secretary approves the SEA's request for a particular fiscal year under paragraph (a) of this section, the SEA shall provide assurances that it will—

(1) Make these allocations using the same factors as the Secretary uses in determining the amount of grants under section 111(a) (Grants—amount and eligibility) of Title I; and

(2) Establish procedures through which LEAs dissatisfied with the determinations made by the SEA may appeal directly to the Secretary for a final determination.

(Sec. 111(a)(3)(C), 20 U.S.C. 2711(a)(3)(C))

§ 201.14 Distribution of an additional amount based on the survey of income and education.

(a) If the amount appropriated for basic grants for any other fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under section 111(a)(3)(D) (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates one half of the excess amount to SEAs on the basis of data from the 1975 survey of income and education conducted by the Bureau of the Census.

(b) An SEA shall allocate to LEAs within the State any additional amounts available under paragraph (a) of this section in exact proportion to the amounts allocated to the LEAs for Title I basic grants.

(Sec. 111(a)(3)(D), 20 U.S.C. 2711(a)(3)(D))

§ 201.15 Allocation of Title I funds among project areas and project schools.

(a) Except as provided in paragraph (c) of this section, an LEA shall allocate Title I funds among project areas and project schools on the basis of the number and needs of the children to be served, as determined under §§ 201.100-201.105.

(b) In meeting the requirement in paragraph (a) of this section, the LEA shall use common criteria to—

(1) Determine the number and needs of the children to be served; and

(2) Allocate Title I funds to each project area or project school.

(c) An LEA may adjust the allocation for a project area or project school, if that adjustment is necessary to meet the fiscal requirements in § 201.51(d) concerning project areas or project schools for which the concentration of children from low-income families is at least 25 percent.

(Sec. 124(e), 20 U.S.C. 2734(e))

§§ 201.16-201.19 [Reserved]

SPECIAL INCENTIVE GRANTS

§ 201.20 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a payment under section 111 (relating to basic grants) of Title I for any fiscal year shall be entitled to an additional grant under section 116 (relating to special incentive grants) of Title I if the LEA is located in a State that has in effect for that fiscal year a State program meeting the following requirements:

(1) The program is similar to Title I in the following characteristics:

(i) It provides financial assistance to meet the special educational needs of educationally deprived children.

(ii) All participating children are educationally deprived.

(iii) The SEA bases the program on performance objectives related to educational achievement and evaluates the program in a manner consistent with those performance objectives.

(iv) The program provides supplementary services designed to meet the special educational needs of participating children.

(v) The LEA keeps whatever records are necessary to ensure that the requirements in paragraphs (a)(1)(i) through (a)(1)(iv) of this section are met and provides access to those records for the purpose of verification.

(vi) The SEA monitors performance under the program to ensure that all requirements are met.

(2) Not less than 50 percent of the funds expended under the State program in any LEA in the State, in the fiscal year preceding the fiscal year in which the State is to receive a payment for an additional grant under section 116 of Title I, is expended in school attendance areas that have high concentrations of children from low-income families of such LEAs.

(b) (1) A State that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining—

(i) The data required by paragraph (a)(2) of this section; and

(ii) The amount of State funds expended under the State program referred to in § 201.20(a).

(2) The State shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 116(a), 20 U.S.C. 2721(a); Sec. 116(b), 20 U.S.C. 2721(b))

§ 201.21 State entitlements.

(a) Except as provided in paragraph (c) of this section, the aggregate amount of special incentive grants to which the LEAs in a State are entitled for any fiscal year is 50 percent of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements in § 201.20(a).

(b) (1) If the sums appropriated for a fiscal year are not sufficient to pay the total amounts to which all LEAs are entitled under this section, the SEA shall ratably reduce the amounts to be paid those agencies to the extent necessary to bring the payments within the limits of the amounts appropriated.

(2) If additional funds become available for making payments under this section for that year, the SEA shall increase the reduced amounts referred to in paragraph (b)(1) of this section on the same basis that they were reduced.

(c) The aggregate amount of special incentive grants that the LEAs in a State are eligible to receive for any fiscal year may not exceed 10 percent of the aggregate amount that LEAs in the State are eligible to receive for basic grants under section 111 of Title I for that fiscal year.

(d) (1) If, in any fiscal year, the expenditures made by a State under a program meeting the requirements of § 201.20(a) equal or exceed expenditures under that program in the preceding fiscal year, the amount paid to the State under this section is not less than the amount paid to the State under this section in the preceding fiscal year.

(2) (i) The total of any increases required under paragraph (d)(1) of this section is derived by proportionately reducing the amount paid to States that were not entitled to a payment under this section in the preceding fiscal year.

(ii) However, the amount paid to a State under this section for any fiscal year does not exceed the maximum amount to which the State is entitled for that fiscal year for basic grants under section 111 of Title I.

(Sec. 116(b), 20 U.S.C. 2721(b); Sec. 116(c), 20 U.S.C. 2721(c); Sec 116(d), 20 U.S.C. 2721(d))

§ 201.22 LEA entitlements.

For any fiscal year, (a) the amount of the additional grant for each LEA in a State under § 201.21 shall bear the same ratio to (b) the amount allocated to the State under § 201.21 as (c) the amount allocated to the LEA for that fiscal year under section 111 (referring to basic grants) of Title I bears to (d) the aggregate amount allocated to all LEAs in the State for that fiscal year under section 111.

(Sec. 116(b)(2), 20 U.S.C. 2721(b)(2))

§ 201.23 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.21, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(Sec. 116(c)(2), 20 U.S.C. 2721(c)(2))

§ 201.24 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds—

(a) To carry out activities described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local program application for a basic grant) of Title I; and

(b) In accordance with the program requirements in Subpart 3 (Program requirements and applications) of Title I.

(Sec. 116(c)(4), 20 U.S.C. 2721(c)(4))

§§ 201.25-201.29 [Reserved]

CONCENTRATION GRANTS

§ 201.30 States entitled to receive concentration grant funds.

Section 117(b) (relating to eligibility for and amount of special concentration grants) of Title I provides that a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Title I for any fiscal year is entitled to concentration grant funds from the amount appropriated for that fiscal year under section 117(d) (relating to appropriations for concentration grants) of Title I.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1))

§ 201.31 Amount of concentration grant funds that each State receives.

(a) The Secretary determines the amount of concentration grant funds a State receives under section 117 (relating to the amount of the concentration grant) of Title I.

(b) However, each State that is entitled to concentration grant funds receives at least one-quarter of one percent of the total funds appropriated for the fiscal year under section 117(d) of Title I.

(c) The Secretary determines the minimum amount of concentration grant funds that each State is entitled to receive before setting aside any amounts for State administrative costs and evaluation.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1); Sec. 117(b)(2), 20 U.S.C. 2722(b)(2); Sec. 117(b)(3), 20 U.S.C. 2722(b)(3))

§ 201.32 Allocation of concentration grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, concentration grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) (relating to the eligibility for a concentration grant) of Title I are allocated to the eligible counties within the State by the Secretary in accordance with the formula in section 117(b)(3) of Title I.

(2) Under the formula referred to in paragraph (a)(1) of this section, a county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant appropriation as an eligible county that is located in a State that receives more than the minimum allocation.

(b) *Exceptions.* (1) Except as provided in paragraph (b)(3) of this section, after all the eligible counties in a State that received the minimum grant have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within that State any concentration grant funds that remain unallocated.

(2) The allocation plan referred to in paragraph (b)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to the procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35.

(3) (i) If the SEA does not submit an allocation plan, or the Secretary disap-

proves the plan that has been submitted and notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the remaining concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(ii) The Secretary makes this allocation according to the basic grant allocation method in section 111(a) (relating to the amount of basic grants) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.33 Allocation of concentration grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, if no county in a State meets the eligibility criteria in section 117(b)(1) of Title I, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within the State concentration grant funds that are awarded to that State.

(2) The allocation plan referred to in paragraph (a)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35

(b) *Exception.* (1) If the SEA does not submit an allocation plan or if the Secretary disapproves the plan that has been submitted and notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(2) The Secretary makes this allocation on the basis of the basic grant allocation method in section 111(a) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.34 Submission of allocation plans.

(a) *States that may submit an allocation plan.* (1) If a State's concentration grant funds remain unallocated after all the eligible counties in that State have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the State may submit, for the Secretary's consideration, a plan for allocation of these unallocated funds to eligible counties within the State.

(2) Only counties that are eligible to receive basic grants under Part A of Title I may receive concentration grant funds.

(b) *Submission through SEA.* A State that chooses to submit an allocation plan shall submit the plan through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Secretary, an allocation plan must include—

(1) (i) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of Title I; and

(ii) The amount of concentration grant funds that each of those counties receives under the formula in section 117(b)(3) of Title I;

(2) (i) A list of all counties in the State; and

(ii) The amount of concentration grant funds, if any, that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the concentration grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed;

(ii) How this method meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(iii) The reasons why this method is reasonable in terms of local circumstances including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.35 Secretary's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan, the Secretary considers the extent to which the proposed plan—

(a) Meets the requirements in § 201.34;

(b) Would result in an allocation of concentration grant funds that meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.36 Method of awarding concentration grant funds.

(a) The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.31, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(b) Under § 201.32 or § 201.33, the Secretary allocates those concentration grant funds to eligible counties within a State that receives concentration grant funds.

(c) (1) The SEA shall distribute concentration grant funds—

(i) Among the LEAs in each county that is entitled to receive those funds; and

(ii) On the basis of the current distribution within each of those counties of children aged 5 through 17.

(2) In making this distribution, the State shall use either of the following procedures, as applicable:

(i) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Title I basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under that basic grant formula.

(ii) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the number of children counted under the Title I basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 117(b)(5), 20 U.S.C. 2722(b)(5); Sec. 117(c)(1), 20 U.S.C. 2722(c)(1))

§ 201.37 Use of concentration grant funds.

An LEA that receives concentration grant funds under section 117 of Title I shall use those funds—

(a) To carry out activities that are described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local project application for a basic grant) of Title I; and

(b) In accordance with the Title I program requirements in Subpart 3 of Part A of Title I.

(Sec. 117(c)(2), 20 U.S.C. 2722(c)(2))

REALLOCATION

§ 201.38 Reallocation of Title I funds by SEAs.

(a) By February 1 of each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Title I funds that exceed the amount required to—

(i) Operate their Title I projects effectively during the current fiscal year; and

(ii) Provide a prudent and justifiable reserve of Title I funds for operating their Title I projects effectively during the next fiscal year.

(2) Consider, in making the determination required in paragraph (a)(1) of this section, factors such as:

(i) The number of children being served;

(ii) The special educational needs of the children being served;

(iii) The rate of inflation;

(iv) Increases in the salaries of Title I staff; and

(v) The future availability of Title I funds.

(3) Notify each LEA identified under paragraph (a)(1) of this section and the district advisory council established for the LEA of—

(i) The amount of that LEA's Title I funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Title I application to include approvable proposals for use of the excess funds.

(b) (1) If the LEA fails to properly amend its Title I application in response to the opportunity provided under paragraph (a) of this section, the SEA shall, by March 31 of the current fiscal year, reallocate the excess Title I funds to LEAs that have the greatest need for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.39 Reallocation of Title I funds by the Secretary.

If excess amounts of Title I funds remain after an SEA has completed the process in § 201.38, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

Subpart C—Applying to the State for Title I Funds

§ 201.40 LEAs that may receive Title I assistance.

An LEA that is allocated Title I funds for a fiscal year under Subpart B of this part may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a current Title I project application that—

(a) Describes the projects to be conducted with the Title I funds; and

(b) Has been approved by the SEA.

(Sec. 121; 20 U.S.C. 2731)

§ 201.41 Submission of Title I project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit a Title I project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The Title I project application that is submitted under this subpart by the LEA must include—

(1) The information requested in the application forms and instructions provided by the SEA; and

(2) Any other information the SEA needs in order to determine whether the application meets the standards for approval in 34 CFR 200.110.

(c) *Amendments to the application.* The LEA shall update and amend its Title I project application as required by 34 CFR 200.113.

(Sec. 121, 20 U.S.C. 2731)

§§ 201.42-201.49 [Reserved]

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

IDENTIFYING ELIGIBLE SCHOOLS AND SCHOOL ATTENDANCE AREAS

§ 201.50 Overview of the regulations in this subpart.

(a) Sections 122 and 123 of Title I require an LEA to concentrate the services funded under Title I on the educationally deprived children residing in school attendance areas with high concentrations of children from low-income families.

(b) The regulations in this subpart contain requirements for—

(1) Identifying school attendance areas and schools as being eligible to receive Title I assistance; and

(2) Selecting those eligible school attendance areas and schools that are to be project areas and project schools to receive Title I assistance.

(Sec. 122, 20 U.S.C. 2732; Sec. 123, 20 U.S.C. 2733)

§ 201.51 Identifying eligible school attendance areas.

(a) *General rule.* Except as provided in §§ 201.63-201.66, an LEA may use Title I funds only in school attendance areas that the LEA has identified—using the procedures in this section—as having sufficiently high concentrations of children from low-income families to be eligible for Title I services.

(b) *Measures of low-income status.* (1) For purposes of making the eligibility determinations discussed in this subpart, the LEA shall select and use the best available measure—which may be a composite of several indicators—for determining what is a low-income family.

(2) Examples of the best available measures of low-income status may include—

(i) Data on children from families receiving Aid to Families with Dependent Children (AFDC); or

(ii) Data on families whose children are eligible to receive benefits under the National School Lunch Program.

(3) Regardless of the measure of low-income status that the LEA selects, the LEA shall use that same measure for purposes of determining the eligibility of all its school attendance areas and schools under this subpart.

(c) *Use of grade span groupings.* (1) The LEA may identify its eligible school attendance areas and eligible schools by—

(i) Applying the methods in paragraph (d) of this section to each school attendance area and school; or

(ii) Grouping its school attendance areas and schools according to the grade spans by those schools and applying the methods described in paragraph (d) of this section to each attendance area and school within each grouping.

(2) If an LEA uses grade span groupings for purposes of this subpart, the groupings must be consistent with the grade spans served by the LEA's schools. For example, common groupings include grades K-6, 7-9, and 10-12.

(3) The LEA may not use more grade span groupings for purposes of this subpart than the number of groupings permitted for the purpose of determining comparability under § 201.117.

(d) *Methods for identifying eligible school attendance areas*—(1) *Percentage method*—. (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the percentage of children from low-income families in that school attendance area is at least equal to the percentage of children from low-income families in the LEA as a whole.

(ii) *25 percent rule.* (A) Even if the percentage of children from low-income families in the LEA as a whole exceeds 25 percent, the LEA may—subject to the conditions in paragraph (d)(1)(ii)(B) of this section—identify as eligible each school attendance area in which at least 25 percent of the children are from low-income families.

(B) An LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section only if the aggregate per pupil amount of Title I funds and funds from a State program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I that are spent during the current fiscal year—in each school attendance area of the LEA in which Title I projects were carried out during the preceding fiscal year—equal or exceed the aggregate per pupil amounts spent from those sources in each of those areas in the preceding fiscal year.

(C) *Calculation of 25 percent rule.* In order to determine whether it has met the requirements for using the 25 percent rule in paragraph (d)(1)(ii)(B) of this section, the LEA may take the following steps:

(*1*) *Step 1.* For each school attendance area of the LEA in which Title I projects were carried out during the preceding fiscal year, the LEA lists—

(*i*) The aggregate amount of funds the LEA is spending in the attendance area during the current fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(*ii*) The total number of children receiving services under either Title I or the State compensatory education program during the current fiscal year. (For purposes of this section, if a child receives services under more than one program, the child shall be counted as receiving services under each program.)

(*2*) *Step 2.* The LEA divides the number of children listed under (b) of Step 1 into the aggregate amount of funds listed under (a) of Step 1.

(*3*) *Step 3.* For each school attendance area referred to in Step 1, the LEA lists—

(*i*) The aggregate amount of funds the LEA spent during the preceding fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) of Title I; and

(*ii*) The total number of children who received services during the preceding fiscal year from either Title I or the State compensatory education program.

(*4*) *Step 4.* The LEA divides the number of children listed under (b) of Step 3 into the aggregate amount of funds listed under (a) of Step 3.

(*5*) *Step 5.* The LEA compares the amount calculated in Step 2 with the amount calculated in Step 4. If the amount calculated in Step 2 equals or exceeds the amount calculated in Step 4, the LEA meets the requirements in paragraph (d)(1)(ii)(B) of this section for using the 25 percent rule.

(iii) *Special requirement if grade span groupings are used.* If the LEA groups its school attendance areas by grade spans under § 201.51(c), the LEA shall determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping. The LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section for any or all of those groupings.

(2) *Numerical method.* (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) *Special requirement if grade span groupings are used.* If the LEA groups its school attendance areas by grade spans under § 201.51(c), the LEA shall determine an average number of children from low-income families per school attendance area in the LEA as a whole for each grade span grouping.

(3) *Combination of percentage and numerical method.* (i) Subject to the requirement in paragraph (d)(3)(ii) of this section, the LEA may identify some school attendance areas as eligible by using the percentage method and some by using the numerical method.

(ii) The total number of school attendance areas that the LEA identifies as eligible by using the combination method may not be more than the maximum number of school attendance areas, or school attendance areas plus schools, that the LEA would have identified if it has used one of the methods in paragraph (d)(1) or (d)(2) of this section.

(4) *Special rule if there is no wide variance in percentages of children from low-income families.* An LEA may identify all of the school attendance areas in the district or in a grade span grouping as eligible to receive Title I assistance if the variation between (i) the percentage of children from low-income families in the school attendance area with the highest concentration of children from low-income families and (ii) the percentage of children from low-income families in the school attendance area with the lowest concentration of children from low-income families is not more than the greater of—

(A) Five percent; or

(B) One-third of the percentage of children from low-income families in the LEA's district as a whole.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.52 Identifying eligible schools.

(a) *Method for identifying eligible schools.* An LEA may identify a school as an eligible school if that school meets one or more of the conditions in paragraph (b) of this section and—

(1) Is located in an ineligible school attendance area; or

(2) Serves children from more than one school attendance area.

(b) *Conditions.* The LEA may identify a school as eligible under paragraph

(a) of this section if the school meets one or more of the following conditions:

(1) The percentage of children from low-income families in ADA at the school is at least substantially the same as the percentage of children from low-income families in the LEA as a whole.

(2) The percentage of children from low-income families in ADA at the school is at least equal to 25 percent of the total number of children in ADA at the school and—

(i) The LEA has identified one or more school attendance areas as eligible under § 201.51(d)(1)(ii); and

(ii) The schools identified as eligible schools under the procedures in this paragraph meet the requirements in § 201.51(d)(1)(ii).

(3) The number of children from low-income families in ADA at the school is at least substantially the same as the average number of children from low-income families per school attendance area in the LEA as a whole.

(c) *Grade span groupings.* The LEA may use grade span groupings to identify eligible schools, if those groupings comply with the requirements in § 201.51(c).

(Sec. 122(b), 20 U.S.C. 2732(b))

§§ 201.53-201.59 [Reserved]

SELECTING SCHOOLS AND SCHOOL ATTENDANCE AREAS FOR TITLE I PROJECTS

§ 201.60 Overview of the process of selecting school attendance areas and schools for Title I projects.

(a) After an LEA determines which school attendance areas and schools are eligible under the procedures in §§ 201.51-201.52, the LEA determines how many eligible areas and schools it will select as Title I project areas and project schools to receive Title I services during a fiscal year. The LEA makes this determination on the basis of—

(1) The amount of Title I funds available; and

(2) The amount of Title I funds required to—

(i) Operate a Title I project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served, as required by 34 CFR 200.51; and

(ii) Provide Title I services to all children who satisfy the criteria developed under §§ 201.70-201.71 for selecting children to be served.

(b) In selecting school attendance areas and schools for Title I project areas and project schools under the procedures in §§ 201.60-201.66, the LEA shall use the same measure of low-income status as it used in identifying eligible school attendance areas and eligible schools under the procedures in §§ 201.50-201.52.

(c) If Title I funds are not sufficient to serve all educationally deprived children in all eligible school attendance areas and schools, the LEA—using the methods in §§ 201.60-201.66—shall select which of the eligible school attendance areas and schools will receive Title I services.

(Sec. 122, 20 U.S.C. 2732)

§ 201.61 Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.

(a) If the LEA does not select all eligible school attendance areas as Title I project areas, the LEA shall—

(1) Annually rank its eligible attendance areas from highest to lowest, according to their relative degree of concentration of children from low-income families; and

(2) Except as provided in §§ 201.63-201.66, select eligible school attendance areas as Title I project areas, in rank order, beginning with the highest ranking eligible school attendance area, until the LEA lacks sufficient Title I funds to serve any additional school attendance areas.

(b) If an LEA used grade span groupings that complied with § 201.51(c) for purposes of identifying eligible school attendance areas and schools, it may continue to use those groupings for purposes of ranking and selecting school attendance areas and schools.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.62 Selecting project schools from among the schools that the LEA identified as eligible schools.

(a) If an LEA identifies a school or schools as eligible under the procedure in § 201.52, the LEA may use the methods in § 201.61 to rank its eligible schools.

(b) After ranking its eligible schools using the methods in § 201.61, the LEA shall—

(1) Consolidate into a single ranking its rankings of eligible schools with its rankings of eligible school attendance areas; and

(2) Except as provided in §§ 201.63-201.66, select eligible schools and school attendance areas to receive Title I services, in rank order, beginning with the highest ranking eligible school or school attendance area until the LEA lacks sufficient funds to serve any additional schools or school attendance areas.

(Sec. 122, 20 U.S.C. 2732)

§ 201.63 Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.

After ranking its eligible school attendance areas and eligible schools, according to the procedures in §§ 201.61-201.62, an LEA may select—as a project area or project school—a lower ranked eligible school attendance area or eligible school, instead of a higher ranked eligible school attendance area or eligible school, if—

(a) The lower ranked eligible school attendance area or eligible school has an incidence of educationally deprived children—as determined under § 201.66(a)(2)—that is 1.2 times the percentage or number of educationally deprived children in the higher ranked eligible school attendance area or eligible school; and

(b) The LEA that uses the alternative selection procedures in this section does not provide Title I services in more eligible school attendance areas or eligible schools than the number that would have received Title I services under the ranking and selection procedures in §§ 201.61-201.62.

(Sec. 122(d), 20 U.S.C. 2732(d))

§ 201.64 Continuation of eligibility for certain school attendance areas or schools.

(a) Except as provided in paragraphs (c) and (d) of this section, an LEA may select a school attendance area or a school to receive Title I services—even though that area or school does not qualify under the procedures in §§ 201.61-201.63—if the area or school qualified and was selected as a Title I project area or project school in either of the two fiscal years preceding the fiscal year for which the funds will be granted.

(b) The eligibility conferred by paragraph (a) of this section is valid for not more than two fiscal years.

(c) If a school attendance area or school that was selected as a project area or project school in either of the two preceding years is substantially different from what it was during those years, the LEA may not select that school attendance area or school as a project area or project school on the basis of this section.

(d) If the LEA changes its method of ranking eligible school attendance areas and schools from the method it used during the preceding fiscal year, the LEA may not use the provisions in this section to provide Title I services in more school attendance areas or schools than the number that could have received Title I services under the method of ranking used by the LEA during the current fiscal year.

(Sec. 122(c), 20 U.S.C. 2732(c))

§ 201.65 Skipping higher-ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.

(a) Subject to the requirements in this section, an LEA may skip an eligible school attendance area or school that ranks higher under the procedures in §§ 201.61-201.62 and select a lower-ranked eligible attendance area or school to be a project area or project school to receive Title I services. The LEA may do this if the higher-ranked school attendance area or school is already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds.

(b) As used in paragraph (a) of this section, the term "services of the same nature and scope" means non-federally funded services that—

(1) Meet the requirements in 34 CFR 200.51 concerning size, scope, and quality;

(2) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(3) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(c) If an LEA skips an eligible attendance area under this section, the LEA shall—

(1) Ensure that the eligible attendance area that is skipped receives State and locally funded services comparable to the State and locally funded services provided to ineligible school attendance areas in the LEA, as required by §§ 201.112-201.123; and

(2) Comply with section 122(e) of Title I which contains requirements concerning services that must be provided to children attending private schools.

(Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.66 Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.

(a) Subject to the conditions in paragraph (d) of this section, an LEA may rank all its school attendance areas according to both—

(1) Their relative degree of concentration of children from low-income families, as required by §§ 201.61-201.62; and

(2) Their relative incidence of educational deprivation. The incidence of educational deprivation is determined by the percentage or number of children in each school attendance area or school that are identified as educationally deprived through the use of objective measures of educational deprivation—such as standardized achievement tests or other objective tests—that the LEA uniformly applies in all of the school attendance areas.

(b) Except as provided in paragraph (c) of this section, the LEA shall select school attendance areas to be project areas, in rank order according to their relative degree of concentration of children from low-income families, as required by §§ 201.61-201.62.

(c) The LEA may select, as a Title I project area, a school attendance area that ranks lower than another school attendance area on the basis of its relative concentration of children from low-income families if—

(1) The lower-ranking school attendance area has an incidence of educationally deprived children, as determined under paragraph (a)(2) of this section, that is 1.2 times the percentage or number of educationally deprived children in the higher-ranked school attendance area; and

(2) The LEA that uses this alternative ranking and selection procedure does not provide Title I services in more school attendance areas than the number that would have received Title I services under the procedures in §§ 201.61-201.62.

(d) (1) An LEA that desires to use the alternative ranking procedures in this section for selecting school attendance areas shall, with the prior consent of the Title I district advisory council, apply to the SEA for permission to use the alternative ranking procedures.

(2) The SEA shall approve an application that is filed under paragraph (d)(1) of this section only if the SEA determines that the LEA's use of the alternative ranking procedures will not substantially impair the delivery of compensatory education to educationally deprived children from low-income families in the school attendance areas and schools that were selected to receive Title I services under the procedures in §§ 201.61-201.62.

(3) For the purpose of making the determination referred to in para-

graph (d)(2) of this section, the following terms are defined:

(i) The term "not substantially impair the delivery"—

(A) Means that the total number of children from low-income families in the school attendance areas selected for Title I services under the alternative ranking procedures in this section is not less than 90 percent of the number of children from low-income families in the school attendance areas and schools that otherwise would be selected to receive Title I services under the procedures in §§ 201.61-201.62; or

(B) Is determined by an alternative standard developed by the SEA and approved by the Secretary as a more accurate measure.

(ii) The term "compensatory education" means Title I services and services provided under State compensatory education programs that meet the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I.

(e) If an LEA uses the alternative ranking procedure in this section, and provides Title I services in one or more school attendance areas that would not have been eligible under the ranking procedures in § 201.61, none of the school attendance areas that are designated as eligible under the alternative ranking—but not served—may be considered to be eligible school attendance areas under 34 CFR Part 200 or 201.

(Sec. 122(a)(2), 20 U.S.C. 2732(a)(2))

§§ 201.67-201.69 [Reserved]

Subpart E—Identifying and Selecting Children To Be Served

§ 201.70 General rules for identifying eligible children and selecting children to be served.

Except as provided in §§ 201.71-201.72, an LEA shall use Title I funds to serve children who—

(a) Reside in school attendance areas that the LEA selected as project areas or attend schools that the LEA selected as project schools;

(b) Are identified by the current annual assessment of educational needs, conducted by the LEA under §§ 201.100-201.105, as educationally deprived children; and

(c) Are identified and selected by the LEA, under the procedures in §§ 201.101-201.103, as currently having the greatest need of special assistance.

(Sec. 123(a), 20 U.S.C. 2733(a))

§ 201.71 Special rules for identifying and selecting children to be served.

(a) *Continuation of eligibility for educationally deprived children who are no longer in greatest need of special assistance.* An LEA may use Title I funds, during the current fiscal year, to serve children not currently in greatest need of special assistance, as required in § 201.70(c), if those children—

(1) Were in greatest need of special assistance in any previous fiscal year under the criteria that were used by the LEA for that year;

(2) Are currently in a school attendance area that the LEA selected as a project area or attending a school that the LEA selected as a project school under §§ 201.60-201.66; and

(3) Are identified, by the current annual assessment of educational need conducted by the LEA under §§ 201.100-201.105, as educationally deprived children.

(b) *Continuation of eligibility for educationally deprived children who are transferred to school attendance areas or schools that are not selected as project areas or project schools.* (1) If it meets the conditions in paragraph (b)(2) of this section, an LEA may use Title I funds during the current fiscal year to continue to serve children—

(i) Whom the LEA identified as eligible children under § 201.101 and selected to serve under § 201.103; and

(ii) Who begin to participate in the LEA's Title I project; but

(iii) Who, during the same school year, are transferred—either voluntarily or involuntarily—to a school attendance area or school that is not receiving Title I services under §§ 201.60-201.66.

(2) At the LEA's discretion, the children referred to in paragraph (b)(1) of

this section may continue to participate in the LEA's Title I project for the duration of the current school year, which may include a summer school program.

(c) *Skipping children determined to be in greatest need of special assistance but who are receiving services of the same nature and scope paid from non-Federal sources.* (1) If the educationally deprived children in greatest need of special assistance—as determined by an LEA under § 201.103—are already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds, the LEA—

(i) May decide not to provide Title I services to those children; and

(ii) May select other educationally deprived children in the project areas or project schools to receive the Title I services.

(2) As used in paragraph (c)(1) of this section, the term "services of the same nature and scope" means nonfederally funded services that—

(i) Meet the requirements in 34 CFR 200.51 concerning size, scope and quality;

(ii) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(iii) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(Sec. 123(b), 20 U.S.C. 2733(b); Sec. 123(c), 20 U.S.C. 2733(c); Sec. 123(d), 20 U.S.C. 2733(d))

(d) *Infrequent participation by a limited number of children who are not in greatest need of assistance or who have not been identified as educationally deprived.* An LEA may provide, on an incidental basis, a particular Title I service to children who have not been selected to participate in the LEA's Title I project under §§ 201.70-201.71 and §§ 201.101-201.103, if—

(1) The Title I service is designed to meet the special educational needs of children who have been selected under §§ 201.70-201.71 and § 201.103 and is focused on those children;

(2) It is impractical to exclude the children who have not been selected to participate in the LEA's Title I project from the particular Title I service, at the time that the service is provided;

(3) The children who have not been selected are in the same grade level as the children who have been selected;

(4) The inclusion in the group being served of the children who have not been selected does not—

(i) Decrease the effectiveness or quality of the Title I service received by the children who have been selected;

(ii) Increase the cost of providing the service; or

(iii) Result in the exclusion of children who have been selected and would otherwise receive the Title I service;

(5) The LEA indicates in its project application—

(i) The estimated number of children who have not been selected who may receive a particular Title I service;

(ii) The reasons why the inclusion of these children who have not been selected would not decrease the quality of Title I services received by the children who have been selected; and

(iii) The reasons why the inclusion of these children who have not been selected would not increase the cost of providing the service; and

(6) The number of children in each school of the LEA who have not been selected but who will receive a Title I service does not constitute more than 5 percent of the total number of children who are receiving that particular Title I service in that school.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§ 201.72 Use of Title I funds for a schoolwide project.

(a) *Eligibility of a school for a schoolwide project.* In order to upgrade the entire educational program in a school, an LEA may select that school for a schoolwide project during a fiscal year if—

(1) The school serves a school attendance area that the LEA has iden-

tified under § 201.51 as eligible to receive Title I services during that fiscal year;

(2) At least 75 percent of the children in ADA at the school are from low-income families, as determined by using the measure of low income that the LEA uses during the fiscal year to identify eligible school attendance areas under § 201.51;

(3) The LEA develops for the school a plan that meets the requirements in § 201.73 and is approved by the SEA; and

(4) The LEA meets the financial requirements in § 201.74.

(b) *Effect of selection of a school for a schoolwide project.* For each school that is selected for a schoolwide project in compliance with the requirements in paragraph (a) of this section, the LEA is not required to—

(1) Comply with the requirements in section 124(f) (Coordination with other programs) and 173 (Recordkeeping, fiscal control, and fund accounting) of Title I and 34 CFR 200.42 and 200.140, concerning the commingling of Title I funds with funds available for regular programs;

(2) Comply with the requirements in sections 123 (Children to be served) and 124(b) (Assessment of educational need) of Title I and §§ 201.70-201.71 and §§ 201.101-201.103, concerning the identification and selection of particular children to participate in Title I projects; and

(3) Demonstrate that the particular *services* paid for with Title I funds supplement the *services* regularly provided in that school. (However, *see* § 201.74(d), which requires that Title I *funds supplement the amount of non-Federal funds* that are provided to the school).

(Sec. 133, 20 U.S.C. 2753)

§ 201.73 Required plan for each school selected for a schoolwide project.

(a) *Development and approval of the plan.* (1) An LEA may select a school for a schoolwide project only if the LEA develops for that school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA.

(2) The SEA shall approve the plan referred to in paragraph (a)(1) of this section if the plan meets the requirements in paragraph (b) of this section.

(b) *Required plans.* The plan referred to in paragraph (a) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school—in particular the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be involved in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for periodic consultation among the individuals referred to in paragraph (b)(3) of this section concerning the educational progress of all students in the school;

(5) Be approved by the project area advisory council that was established under §§ 201.155-201.157 for the school attendance area served by the school;

(6) Provide for appropriate training to enable teachers and teacher aides to carry out the plan effectively;

(7) Include procedures that the LEA will use to evaluate the effectiveness of the schoolwide project and that will involve in the evaluation the participation of the individuals referred to in paragraph (b)(3) of this section; and

(8) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(7) of this section.

(Sec. 133(b), 20 U.S.C. 2753(b); Sec. 133(c), 20 U.S.C. 2753(c))

§ 201.74 Financial requirements for a schoolwide project.

An LEA that selects a school for a schoolwide project under §§ 201.72-201.73 shall meet the following financial requirements:

(a) *Equitable distribution of Title I funds for educationally deprived children.* In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Title I funds that is at least equal to the amount of title I funds that the LEA provides per educationally deprived child served in schools, if any, that serve project areas.

(b) *Special supplemental State and local funds required.* In each school selected for a schoolwide project, the LEA shall provide, per child served by the schoolwide project in that school who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Title I funds that the LEA provides per educationally deprived child served in that school.

(c) *Maintenance of State and local effort.* During the fiscal year in which the plan approved under § 201.73 is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(d) *Title I funds must supplement non-Federal funds that would otherwise be provided to the school.* In order to meet the requirements in section 126(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I, 34 CFR 200.92, and §§ 201.130-201.143. Each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(Sec. 133(b), 20 U.S.C. 2753(b))

§ 201.75 Serving children in local institutions for neglected or delinquent children.

(a) An LEA whose allocation under § 201.12 is based in part on the number of children residing within the LEA in local institutions for neglected or delinquent children—as defined in § 201.4(b)—shall provide Title I services to meet the special educational needs of children currently residing in those institutions.

(b) In providing the services referred to in paragraph (a) of this section, the LEA shall comply with all requirements in the Title I statute and 34 CFR Parts 200 and 201, except for the requirements contained in the following subparts of Part 201 and the statutory provisions on which they are based:

(1) Subpart D—Designating Schools and School Attendance Areas for Title I Projects.

(2) Subpart E—Identifying and Selecting Children To Be Served (except for the requirements in this section).

(3) Subpart F—Participation of Children Enrolled in Private Schools (except for the prohibition concerning noninstructional duties in § 201.82).

(4) Subpart G—Needs Assessment.

(5) Subpart I—Parental Involvement.

(6) Subpart J—Evaluations by Local Educational Agencies.

(c) The LEA may provide the services referred to in paragraph (a) of this section at the local institution or at any location under the LEA's administration and control.

(d) The LEA that is required to provide the services referred to in paragraph (a) of this section shall include the following information in its application for Title I funds:

(1) The number of children to be served.

(2) A description of its methods for assessing the special educational needs of institutionalized children.

(3) A description of the special educational needs of those children.

(4) A description of the services that will be provided to meet those special educational needs.

(5) A description of its performance objectives and plans for evaluating the effectiveness of the project.

(e) The LEA shall, in reports required by the SEA under 34 CFR 200.161, include specific information on the services provided and the effectiveness of those services in meeting the special educational needs of the institutionalized children.

(Sec. 111, 20 U.S.C. 2711)

§§ 201.76-201.79 [Reserved]

Subpart F—Participation of Children Enrolled in Private Schools

GENERAL REQUIREMENTS

§ 201.80 Required opportunity for participation of private school children in Title I projects.

(a) An LEA shall meet the requirements for participation of students enrolled in private schools contained in Subpart F of 34 CFR Part 76, and the additional requirements contained in §§ 201.81-201.82 and §§ 201.90-201.97.

(b) In fulfilling the requirements referred to in paragraph (a) of this section, the LEA shall comply with—

(1) Section 122 (Designating school attendance areas) of Title I and §§ 201.60-201.66, concerning the selection of school attendance areas and schools for Title I projects.

(2) Section 123 (Children to be served) of Title I and §§ 201.70-201.71, concerning the selection of children to be served by Title I projects;

(3) Section 124(a) (Purpose of program) of Title I, describing the purpose of Title I projects;

(4) Section 124(b) (Assessment of educational need) of Title I and §§ 201.100-201.105, containing requirements for the assessment of educational needs;

(5) Section 124(d) (Sufficient size, scope, and quality) of Title I and 34 CFR 200.51, containing requirements concerning the size, scope, and quality of Title I projects;

(6) Section 124(l) (Training of educational aides) of Title I and 34 CFR 200.60, containing requirements for the training of education aides; and

(7) Section 126(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I and §§ 201.130-201.135 requiring the use of Title I funds to supplement, not supplant non-Federal funds that would otherwise be available.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.81 Determining the eligibility of private school children.

(a) Title 34 CFR Part 76.651(a)(2) covers the responsibility of SEAs and LEAs to provide services to eligible private school children. Eligible students under Part 201 include educationally deprived children who reside in a project area selected under §§ 201.60-201.61 or §§ 201.63-201.66.

(b) An LEA shall adopt procedures for identifying and selecting for participation in a Title I project those private school children who satisfy criteria identical or comparable to those adopted by the LEA for public school children under §§ 201.101-201.103.

(c) If it is impractical for an LEA to conduct Title I projects for educationally deprived children from the project area who are enrolled in private schools located in other LEAs, the LEA may arrange with the other LEAs to provide Title I services for those children.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.82 Prohibition concerning noninstructional duties.

Limitations on the use of personnel paid with program funds are contained in 34 CFR 76.659-76.660. In addition, Title I personnel who provide services in private schools may not perform the noninstructional duties permitted under 34 CFR 200.61.

(Sec. 130(a), 20 U.S.C. 2740(a); Sec. 1004 of ESEA, 20 U.S.C. 3384)

§§ 201.83-201.89 [Reserved]

BY-PASS PROVISIONS

NOTE: These by-pass provisions refer to "equitable services" which means the same as "comparable benefits" in 34 CFR 76.654.

§ 201.90 General standard for by-pass actions.

(a) Except as provided in paragraph (b) of this section, the Secretary by-passes an LEA responsible for providing Title I services to educationally deprived children in private schools if—

(1) The Secretary determines that the LEA has substantially failed to provide for the participation of these private school children on an equitable basis; or

(2) The LEA is prohibited by law from providing for this participation.

(b) The Secretary may decide not to implement a by-pass if—

(1) The number of private school children in the LEA who would participate is fewer than 10; and

(2) The by-pass would result in the wasteful and extravagant expenditure of Title I funds.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.91 Secretary's procedures for by-pass actions.

Before taking any final by-pass action under § 201.95, the Secretary provides the LEA and SEA with—

(a) Written notice of the Secretary's intent to by-pass the LEA. This notice—

(1) Indicates the reasons for the by-pass;

(2) Advises the LEA and SEA that, within 45 days, they may—

(i) Submit written objections to the proposed by-pass; and

(ii) Request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented; and

(3) Is sent by certified mail with a return receipt requested; and

(b) An opportunity to appear at a hearing before the Secretary or the Secretary's designee to show cause why the by-pass should not be implemented.

(Sec. 130(b)(4)(A), 20 U.S.C. 2740(b)(4)(A))

NOTE: Sections 201.92-201.93 governing show cause hearings for by-pass actions will be published separately as proposed regulations.

§§ 201.92-201.93 [Reserved]

§ 201.94 Judicial review of by-pass actions.

If an LEA or SEA is dissatisfied with the Secretary's final action after a proceeding under §§ 201.91-201.93, it may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 130(b)(4)(B), 20 U.S.C. 2740(b)(4)(B))

§ 201.95 Effect of a by-pass action.

If, under the procedures in §§ 201.90-201.94, an LEA is found to have substantially failed to provide or is prohibited from providing for the participation of private school children on an equitable basis, the Secretary—

(a) Waives the LEA's responsibility for providing the Title I services required under §§ 201.80-201.82;

(b) Arranges for Title I services that meet the requirements in §§ 201.80-201.82; and

(c) Deducts the cost of these services, including the administrative cost of arranging for these services, from the Title I allocation of the LEAs in which the private school children reside or from the SEA, if the Secretary decides this deduction is appropriate.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.96 Withholding funds pending final resolution of a by-pass action.

Pending the final resolution of an investigation or complaint that could result in a by-pass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in § 201.95.

(Sec. 130(b)(3)(B), 20 U.S.C. 2740(b)(3)(B))

§ 201.97 Continuation of the by-pass until the LEA complies.

Any by-pass action by the Secretary continues until the Secretary determines that there will no longer by any failure or inability on the part of the LEA that is being by-passed to meet the requirements of §§ 201.80-201.82.

(Sec. 130(b)(3)(C), 20 U.S.C. 2740(b)(3)(C))

§§ 201.98-201.99 [Reserved]

Subpart G—Needs Assessment

§ 201.100 Purpose of the required assessment of educational need.

An LEA may receive Title I assistance only if it conducts an annual assessment of educational need, consistent with §§ 201.101-201.103, that generates data from which the LEA shall—

(a) Identify educationally deprived children in all eligible attendance areas and eligible schools;

(b) Identify the general instructional areas on which the project will focus;

(c) Identify educationally deprived children in the greatest need of special assistance in the instructional areas selected by the LEA; and

(d) Determine, with sufficient specificity to result in the development of highly effective projects, the special educational needs of children who are selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.101 Identification of educationally deprived children.

Using existing and—to the extent possible—objective data, an LEA shall identify educationally deprived children in—

(a) All school attendance areas that are eligible to receive Title I assistance under § 201.51; and

(b) All schools that are eligible to be project schools under § 201.52.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.102 Identification of general instructional areas and needs.

An LEA shall identify the general instructional areas on which the project will focus, including—

(a) The grade levels to be served; and

(b) The types of educational needs to be addressed.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.103 Selection of children to participate in a project.

(a) After completing the procedures in §§ 201.101-201.102 an LEA shall use specified criteria and—to the extent possible—objective data to select first for participation in a project—

(1) Those educationally deprived children who are in the greatest need of assistance in the instructional areas identified under § 201.102; or

(2) Those children who were in greatest need of assistance in a previous year and are still educationally deprived.

(b) In selecting children, an LEA must also meet the supplement, not supplant requirements in §§ 201.130-201.143.

(c) The LEA may use Title I funds to obtain the objective data referred to in paragraph (a) of this section, but it may not use Title I funds for the cost of identifying children under § 201.101.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 24 (1978))

§ 201.104 Determination of the special educational needs of participating children.

After selecting children for participation in a Title I project, according to the provisions in § 201.103, an LEA shall use specified criteria and—to the extent possible—objective data to—

(a) Identify in detail the precise educational needs of the children selected to participate in the project;

(b) Determine whether certain special educational needs are best addressed through noninstructional support services; and

(c) Identify, to the extent possible, factors that have contributed to the educational deprivation of the children selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.105 Establishment of educational objectives and instructional strategies.

(a) Based on the results of the procedures in §§ 201.101-201.104, an LEA shall develop specific—

(1) Educational objectives for its Title I project; and

(2) Types of services and instructional strategies to achieve those objectives.

(b) An LEA is not required to use any particular instructional strategy in its Title I project.

(Sec. 124(b), 20 U.S.C. 2734(b))

§§ 201.106-201.109 [Reserved]

Subpart H—Fiscal Requirements

MAINTENANCE OF EFFORT

§ 201.110 Maintenance of effort requirement.

An LEA must maintain fiscal effort as required by section 126(a) (Maintenance of effort) of Title I and 34 CFR 200.90, unless the LEA receives a waiver from the Secretary under 34 CFR 200.91.

(Sec. 126(a), 20 U.S.C. 2736(a))

EXCESS COSTS

§ 201.111 Excess costs requirement.

An LEA shall use Title I funds only for excess costs, as required by section 126(b) (Excess costs) of Title I and 34 CFR 200.93-200.95.

(Sec. 126(b), 20 U.S.C. 2736(b))

COMPARABILITY

§ 201.112 Basic standards for determining comparability of services.

(a) Except as provided in paragraph (b) of this section and in the exclusions in § 201.118, an LEA may receive Title I funds only if it uses State and local funds in schools serving project areas and in school attendance areas that have been skipped under § 201.65 to provide services that, taken as a whole, are at least comparable to services being provided in school attendance areas in the LEA that are not receiving Title I assistance.

(b) If the LEA selects all its school attendance areas as project areas, the LEA may receive Title I funds only if it uses State and local funds—except those excluded under § 201.118—to provide services that, taken as a whole, are substantially comparable in each school serving a project area.

(Sec. 126(e), 20 U.S.C. 2736(e); (Sec. 122(e), 20 U.S.C. 2732(e)))

§ 201.113 Submission of comparability reports.

(a) An LEA, except one described in paragraph (b) of this section, shall submit to its SEA on or before December 1 of each fiscal year a report concerning its compliance with the criteria for determining comparability in § 201.116.

(b) Except as provided in paragraph (c) of this section, the following types of LEAs are not required to submit the report referred to in paragraph (a) of this section:

(1) An LEA that receives at least 95 percent of its educational funds from Federal sources.

(2) An LEA that operates only one school serving children in the grade levels at which Title I services are provided.

(3) An LEA that—

(i) Was not required, as of November 1, 1978, to file a report concerning comparability; and

(ii) Does not have any grade span groupings or size groupings under § 201.51 that include both project areas and nonproject areas.

(c) The Secretary may require an LEA that qualifies for an exemption under paragraph (b)(3) of this section to submit the report referred to in paragraph (a) of this section, if the Secretary has reason to question whether the LEA is in compliance with the comparability requirements in §§ 201.112-201.122.

(d) An LEA that is currently relieved of the obligation to file a comparability report because it qualifies for an exemption under paragraph (b)(3) of this section must still—

(1) Comply with the comparability requirements in §§ 201.112-201.122; and

(2) Maintain records that demonstrate that the LEA is in compliance with those comparability requirements.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.114 Data to be included in a comparability report.

(a) An LEA that is required to submit a comparability report under § 201.113 shall sumbit a report that—

(1) Is in the form prescribed by the SEA;

(2) Contains the information that the SEA needs to make the comparability determinations required under § 201.116; and

(3) Includes the data required under paragraph (b) and (c) of this section.

(b) (1) If the LEA has both project area schools and nonproject area schools, the LEA's comparability report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area or school attendance area that has been skipped under § 201.65, unless the school is exempt under paragraph (d) of this section, and

(ii) On a combined basis for all other schools—that is, nonproject area schools—serving corresponding grades.

(2) If all schools in the LEA serve project areas, the LEA's comparability

report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area, unless the school is exempt under paragraph (d) of this section; and

(ii) On a combined basis for those schools serving project areas with the lowest precentages or numbers of children from low-income families as determined under § 201.116(b).

(c) Except as provided in § 201.118, the LEA shall include the following data for each school and combination of schools as required by paragraph (b)(1) or (b)(2) of this section:

(1) (i) The number of children actually enrolled (less than full-time students must be counted on a full-time equivalency basis); or

(ii) If State or local law specifies that different levels of State or local support be provided to certain categories of children, age groupings, or grade levels and if the SEA approves, the number of children enrolled weighted by multiplying (A) the actual number of children enrolled by (B) the rate specified for each category of children, age grouping or grade level.

(2) The number of instructional staff (determined on a full-time equivalency basis), as defined in § 201.4 who are regularly assigned to the school or schools and paid with State and local funds.

(3) (i) The total amount of the annual salaries of the instructional staff (determined on a full-time equivalency basis) minus (ii) the amount of those salaries based on length of service.

(4) (i) The number of children enrolled, as reported under paragraph (c)(1) of this section, divided by (ii) the number of instructional staff, as reported under paragraph (c)(2) of this section.

(5) (i) The amount of the annual salaries for instructional staff, as reported under paragraph (c)(3) of this section, divided by (ii) the number of children enrolled, as reported under paragraph (c)(1) of this section.

(d) An LEA is not required to include in its comparability report a school with an enrollment of 100 or fewer children, if the LEA submits an assurance to the SEA that it will allocate its staff to that school without regard to the availability of Title I funds.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.115 The date on which the data included in the comparability report must be collected.

The LEA shall collect the data required under § 201.114 as of the date specified by the SEA. In any case, that date may not be later than November 1 of each year.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.116 Criteria for determining comparability of services.

(a) *Criteria that apply if some schools serve project areas and other schools serve school attendance areas that do not receive Title I assistance.* An LEA meets the comparability requirements in § 201.112(a) if the SEA properly determines, for schools serving corresponding grade levels as provided under § 201.117, that—

(1) The average number of children enrolled per instructional staff member for each school serving a project area or school attendance area that has been skipped under § 201.65 is not more than 105 percent of the average number of children enrolled per instructional staff member in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65; and

(2) The average per child expenditure of State and local funds for instructional staff in each school serving a project area or school attendance area that has been skipped under § 201.65 is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65.

(b) *Criteria that apply if all schools serve project areas.* The LEA meets the comparability requirement in § 201.112(b) if, for corresponding grade levels as provided under § 201.117, both of the following conditions prevail:

(1) In each school serving a project area, the average number of children enrolled per instructional staff member is not more than 105 percent of the average number of children enrolled per instructional staff member in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(2) In each school serving a project area, the average per child expenditure of State and local funds for instructional staff is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.117 Grouping schools by corresponding grade levels.

(a) For the purpose of demonstrating compliance with the comparability requirements in §§ 201.112-201.116, an LEA shall—subject to paragraphs (b), (c), and (d) of this section—group all of its schools by corresponding grade levels in up to three groups.

(b) If the LEA has schools that serve eight or more grades above kindergarten, the LEA may consider those schools to be a separate group in addition to the groups determined under paragraph (a) of this section.

(c) (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if one school has an enrollment for a particular grade span that is at least two times that of another school, the LEA may divide—providing it can justify its division under paragraph (c)(4) of this section—the schools in that span into two groups:

(i) One group for the schools with the larger enrollments.

(ii) One group for the schools with the smaller enrollments.

(2) An LEA that has schools with enrollments of 100 or fewer students shall exclude those schools in making a determination of the size of the smallest school.

(3) An LEA may not use the procedure in paragraph (c)(1) of this section to divide a school into two groups if that division would have the effect of exempting any school from compliance with the comparability requirements. However, if this restriction requires an LEA to compare a school with an enrollment for a particular grade span of at least two times that of the school with which it is being compared, the LEA may, with approval of the SEA, weight the enrollments in one or both schools to provide for a more equitable comparison as long as such weighting is consistent with State standards and practices.

(4) In justifying the division permitted in paragraph (c)(1) of this section, the LEA or SEA shall indicate why the different sizes of the schools require different expenditures or pupil-teacher ratios.

(d) Except as provided in paragraphs (b) and (c) of this section, in grouping its schools as required by paragraph (a) of this section, an LEA shall meet the following requirements:

(1) An LEA serving seven or fewer grade levels above kindergarten is limited to one group.

(2) An LEA serving eight or nine grade levels above kindergarten is limited to two groups.

(3) An LEA serving any levels from grades 6 through 12, but only those levels, is limited to two groups if the LEA serves five or more grade levels, and to one group if the LEA serves four or fewer grade levels.

(4) If a school serves grades in more than one group, the LEA shall include that school—

(i) In the group with which the school has the most grade levels in common; or

(ii) In the group that includes the lower grade levels, if the school has the same number of grade levels in common with two or more groups.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.118 Exclusions from the excess costs and comparability requirements.

(a) *General standard.* Subject to the requirements in this paragraph and advance determinations under paragraph (e) or (f) of this section, an LEA may exclude, for the purpose of determining compliance with the comparability requirements in §§ 201.112-201.117 and the excess cost requirement in section 126(b) of Title I—

(1) State and local funds spent in carrying out a special program, as defined in paragraph (b) of this section, or a State phase-in program, as defined in paragraph (c) of this section; and

(2) The FTE number of children and staff in those programs.

(b) *Special program defined.* For purposes of this section, a special program is—

(1) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented by the LEA in accordance with paragraph (d) of this section;

(2) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, does not satisfy the requirements of paragraph (d) of this section; but

(ii) The Secretary has determined permits the LEA to use the special State funds in accordance with paragraph (d) of this section, provided that—

(A) The LEA designs a program that the SEA determines in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(B) The SEA determines that the LEA will implement the program in accordance with paragraph (d) of this section;

(3) A local compensatory education program that—

(i) The SEA has determined in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented in accordance with paragraph (d) of this section; or

(4) (i) A bilingual program for children of limited proficiency in the English language; or

(ii) A special education program for handicapped children or children with specific learning disabilities.

(c) *State phase-in program defined.* (1) For purposes of this section, a State phase-in program is a program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements in paragraph (c)(2) of this section; and

(ii) The SEA determines will be implemented by the LEA in accordance with paragraph (c)(2) of this section.

(2) A State education program that is being phased into full operation meets the requirements of this section if—

(i) The program is authorized and governed specifically by State law;

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(iii) The program is based on objectives, including performance objectives, related to educational achievement and is evaluated in a manner consistent with those objectives;

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(v) The program will benefit all children in a particular school or grade span within a school;

(vi) Schools participating in a program describe, in an individual school plan, program strategies for meeting the special education needs of educationally deprived children;

(vii) At all times during the phase-in period, at least 50 percent of the schools participating in the program are the schools serving project areas that have the greatest number or percentage of educationally deprived children or children from low-income families;

(viii) State funds made available for the phase-in program will supplement, not supplant State and local funds that would, in the absence of the phase-in program, have been provided for schools participating in this program;

(ix) For purposes of complying with the preceding requirements in paragraphs (c)(2)(i) through (viii) of this section, the LEA is separately accountable to the SEA for any funds spent for the program;

(x) The LEAs carrying out the program are complying with the preceding requirements in paragraphs (c)(2)(i) through (ix) of this section; and

(xi) The phase-in period of the program is not more than six school years. However, if the phase-in period for a program began before November 1, 1978, the phase-in period is considered to have begun on November 1, 1978.

(d) *State and local compensatory education program that is similar to Title I.* A State or local educational program meets the requirements of this paragraph and is considered to be similar to the Title I program if—

(1) All children participating in the program are educationally deprived;

(2) The program is based on performance objectives related to educational achievement and is evaluated in a way that is consistent with those objectives;

(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating;

(4) The LEA keeps and affords access to whatever records are necessary to verify compliance with the preceding requirements in paragraphs (d)(1) through (3) of this section;

(5) The SEA monitors performance under the program to ensure that the LEA meets the preceding requirements in paragraphs (d)(1) through (4) of this section.

(e) *Advance determination by the Secretary.* (1) If requested by an SEA, the Secretary makes an advance determination of whether—

(i) A State program described in paragraph (b)(1) or (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) A State phase-in program described in paragraph (c)(1) of this section meets the requirements in paragraph (c)(2) of this section.

(2) Before making an advance determination, the Secretary requires the SEA to submit copies of the applicable provisions of State law, together with all relevant rules, orders, guidelines, interpretations, and other information that the Secretary may need in order to make the determination.

(3) If there is a significant change in the applicable State law or implementation of the State program for which an advance determination is being sought or has been made, the SEA shall promptly submit those changes to the Secretary.

(4) The Secretary makes an advance determination in writing and includes a statement of the reasons for the determination.

(f) *Advance determination by an SEA.* (1) If requested by an LEA, its SEA shall make an advance determination of whether—

(i) An LEA program described in paragraph (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) An LEA program described in paragraph (b)(3) of this section meets the requirements in paragraph (d) of this section.

(2) Before making an advance determination, the SEA shall require the LEA to submit copies of the applicable provisions of local law, together with all relevant rules, orders, guidelines, interpretations, and other information the SEA may need in order to make the determination.

(3) If there is a significant change in the applicable local law or implementation of the program for which an advance determination is being sought or has been made, the LEA shall promptly submit those changes to the SEA.

(4) Each advance determination that the SEA makes must be in writing and must include a statement of the reasons for the determination.

(Sec. 131, 20 U.SC. 2751)

[46 FR 5160, Jan. 19, 1981, as amended at 46 FR 18977, Mar. 27, 1981]

§ 201.119 Required annual assurance.

On or before July 1 of each year covered by a project application, an LEA shall submit to its SEA as part of the application an assurance that the LEA will maintain comparability of State and local services in schools serving attendance areas that were served by the LEA's Title I project during the preceding fiscal year.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.120 Maintaining comparability.

(a) At least once during the period January 1 through April 30, an LEA shall determine whether it is maintaining the comparability required by §§ 201.112-201.119.

(b) Except as provided in paragraph (c) of this section, an LEA shall make whatever adjustments are necessary to maintain the comparability required by §§ 201.112-201.119.

(c) With prior approval of the SEA, an LEA experiencing high student mobility need not make the adjustments required by paragraph (b) of this section unless—

(1) The average number of children enrolled per instructional staff member in any school is more than 110 percent of the LEA's comparability average as determined under § 201.116 (a)(1) or (b)(1); or

(2) The average per child expenditure of State and local funds for instructional staff in any school is less than 90 percent of the LEA's comparability average as determined under § 201.116 (a)(2) or (b)(2).

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.121 Comparability data must be for the same date.

All data that an LEA uses in a given comparability report must reflect conditions as of the same date on which the LEA bases the comparability.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.122 Retention of records concerning comparability.

An LEA that is required to file a comparability report under § 201.113 shall—

(a) Keep all records, worksheets, and documents from which it derived that data included in each comparability report, determination regarding maintenance of comparability, and request for advance determination for the period specified in 34 CFR 200.140;

(b) File, index, and maintain the records required under paragraph (a) of this section so that they may be reviewed easily by local, State, and Federal officials; and

(c) Make the records and documents referred to in paragraph (a) of this section available to parents, teachers, and other persons in accordance with 34 CFR 200.141 and to State and Federal auditors in accordance with 34 CFR 200.142.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.123 Actions to be taken by an SEA if an LEA violates the comparability requirements.

(a) Except as provided in paragraph (b) of this section, an SEA shall, within 30 days of discovering that any school serving a project area is in violation of the comparability requirements in section 126(e) of Title I and §§ 201.112-201.117, but not later than January 1 of the fiscal year involved—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and suspend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210-200.214.

(b) The SEA may not take any compliance action against the LEA under paragraph (a) of this section if—

(1) The LEA files with the SEA a report as of December 1 of the fiscal year involved that shows that one or more schools are in violation of the comparability requirements; and

(2) The LEA files a revised comparability report with the SEA showing that, as of a date no later than December 1 of that fiscal year, the violation has been corrected.

(c) (1) Except as provided in paragraph (c)(2) of this section, if the LEA does not achieve comparability by December 1, the SEA shall ensure that none of the obligations incurred by that LEA during the period when the LEA was not in compliance with the comparability requirements is charged to Title I.

(2) If the LEA enters into a compliance agreement with the SEA before December 1 and fully complies with the terms of that agreement—

(i) The deadline for achieving comparability may be extended until the date specified in the agreement; and

(ii) The LEA is not liable for the Title I obligations it incurred in noncomparable schools during the fiscal year involved and prior to the date specified in the compliance agreement.

(d) If an LEA determined to be in violation of the comparability requirements fails to submit to its SEA by March 1 of the fical year involved a revised comparability report that demonstrates full compliance with the comparability requirements, the SEA shall, under the procedures in § 201.38, reallocate the balance of the LEA's unobligated Title I funds to other LEAs in the State that are in full compliance.

(e) Within 30 days of discovering that an LEA has failed to maintain comparability as required by § 201.120, an SEA shall—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and suspend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210-200.214

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.124 Amount of funds that an SEA shall refund for a violation of the comparability requirement.

(a) Except as provided in paragraph (e) of this section, if the Secretary or an SEA finds, on the basis of an audit, that an LEA failed to comply with the comparability requirements in section 126(e) of Title I and §§ 201.112-201.123, the SEA shall refund to the Department the total amount of Title I funds spent to operate a project in each noncomparable school of the LEA during the period of noncomparability. These funds must include—

(1) All of the Title I expenditures directly attributable to the project in each noncomparable school—that is, direct costs, including salaries, fringe benefits, materials and supplies, equipment, and transportation;

(2) The prorated share, as computed under paragraph (b) of this section, of all the Title I expenditures that are made on a shared basis with other schools serving project areas;

(3) The prorated share, as computed under paragraph (b) of this section, of all the LEA's districtwide Title I costs—that is, costs not directly attributable to any particular school, including expenditures for supervision of instructional and support staff, monitoring, evaluation, and training; and

(4) The prorated share of all the indirect costs attributable to the project, as computed under paragraph (c) of this section.

(b) (1) The SEA shall base the amount of shared costs under paragraph (a)(2) of this section that is charged to each noncomparable school on the ratio of (i) the direct costs charged to Title I for that school—as determined under paragraph (a)(1) of this section—to (ii) the total amount of direct costs for all the schools involved in the shared aspect of the project.

(2) For example, if noncomparable school A with direct costs of $30,000 and noncomparable school B with direct costs of $20,000 shared in a Title I service costing $10,000, school A would be charged with $6,000 (that is, $30,000/$50,000 or 60 percent of $10,000) and school B would be charged with $4,000 (that is, $20,000/$50,000 or 40 percent of $10,000). School A would be charged with a total of $36,000 for expenditures under paragraphs (a)(1) and (a)(2) of this section ($30,000 for direct costs plus $6,000 in shared costs). School B would be charged with a total of $24,000 under those paragraphs ($20,000 for direct costs plus $4,000 in shared costs).

(c) (1) For each noncomparable school, the SEA shall base the sum of the prorated share of the LEA's districtwide Title I costs under paragraph (a)(3) of this section and the prorated share of the indirect costs under paragraph (a)(4) of this section on the ratio of (i) the total of the direct and shared costs under paragraphs (a)(1) and (a)(2) of this section for each noncomparable school to (ii) the total of the direct and shared costs for all project locations.

(2) For example, if noncomparable school A had a total of $36,000 in direct and shared costs, and if the total of the direct and shared costs for

all project locations in the LEA was $500,000, school A would be charged with 7.2 percent ($36,000/$500,000) of the LEA's total districtwide expenditures under paragraph (a)(3) of this section, and 7.2 percent of the total indirect costs under paragraph (a)(4) of this section. Thus, if the LEA had districtwide Title I indirect costs of $50,000, school A would be charged $47,200 (7.2 percent of $100,000) for districtwide expenditures under paragraph (a)(3) of this section and $3,600 (7.2 percent of $50,000) for indirect costs under paragraph (a)(4) of this section.

(d) Thus, under the examples in paragraphs (b)(2) and (c)(2) of this section, the total amount of Title I funds that must be refunded because school A did not meet the comparability requirement would be $46,800 ($30,000 in direct costs, $6,000 in shared costs, $7,200 in districtwide expenditures, and $3,600 in indirect costs).

(e) The SEA is not required to refund any amounts that the LEA spent to operate a project in any noncomparable school of the LEA during the period of noncomparability if—

(1) The comparability violation was revealed in a comparability report that the LEA filed with the SEA before December 1 of that fiscal year involved; and

(2) The LEA filed a revised comparability report with the SEA showing that, as of a date no later than December 1 of the fiscal year, the violation has been corrected.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 185(b), 20 U.S.C. 2835(b); Sec. 452 of GEPA, 20 U.S.C. 1234a)

§ 201.125 SEA reports to the Secretary.

On or before May 1 of each year, an SEA shall report to the Secretary on—

(a) The number of LEAs that—

(1) Are operating Title I projects in the State;

(2) Submitted comparability reports under § 201.113; and

(3) Were required to submit revised comparability reports,

(b) Any actions that the SEA has taken under § 201.123(a);

(c) Any reallocations that the SEA has made under § 201.123(d); and

(d) Any refunds that the SEA has made, or will make, under § 201.124.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 172, 20 U.S.C. 2822)

§§ 201.126-201.129 [Reserved]

SUPPLEMENT, NOT SUPPLANT: GENERAL

§ 201.130 Introduction.

(a) An LEA that receives Title I funds shall use those funds only to supplement, not supplant the level of funds that would, in the absence of Title I funds, be made available from—

(1) Regular non-Federal sources and from non-federal sources from State phase-in programs described in section 131(b) of Title I for the education of pupils participating in Title I projects;

(2) Non-Federal sources for each of the special programs described in section 131(b) of Title I for the education of educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools.

(b) Sections 201.130-201.144 are guidelines to assist agencies in meeting the supplement, not supplant requirements in sections 126 (c) and (d) of Title I. While these guidelines describe permissible ways of meeting those requirements, grantees may develop alternative strategies that comply.

(Sec. 126(a), 20 U.S.C. 2736(c)); sec. 126(d), 20 U.S.C. 2736(d); 42 U.S.C. 2000d-2, 2000d-4; 20 U.S.C. 1681-1683; 29 U.S.C. 749)

[46 FR 18977, Mar. 27, 1981]

§ 201.131 Definitions.

(a) "Educational setting" refers to the time and location in which educational services are provided.

(b) "Handicapped children" includes learning disabled and other handicapped children who meet the definition in 34 CFR 104.3(j) or the definition in 34 CFR 300.5.

(c) "Intensity of instruction" refers to the following two elements in the provision of Title I instruction to a child in a particular class:

(1) The amount of time during which the child receives Title I instruction.

(2) The pupil-teacher ratio used in providing that instruction.

(d) "Limited proficiency in the English language" refers to children—

(1) Whose primary or home language is other than English; and

(2) Who lack sufficient proficiency in the English language to allow them the opportunity to participate effectively in school if the language of instruction is English.

(e) "Primary or home language other than English" means a language, other than English, to which any of the following applies:

(1) It is the first language of the child.

(2) It is the language normally used by the child.

(3) It is a language normally used in the child's home.

(f) "Regular funds" means those State and local funds that an LEA provides for the support of any educational program except the following—

(1) State phase-in programs; or

(2) Special program defined in § 201.118(b).

(g) "State phase-in program" means a program that satisfies the definition in § 201.118(c).

(h) "Special programs."

(1) Are programs defined in § 201.118(b), including programs of the following types:

(A) State or local compensatory education programs.

(B) Bilingual programs for children with limited proficiency in the English language.

(C) Special education programs for handicapped children; and

(2) For purposes of §§ 201.130-201.143 (relating to supplementing and not supplanting of State or local funds), include programs which are supported by—

(A) State or local funds specifically appropriated to support special programs;

(B) State or local funds earmarked by the LEA to support special programs; or

(C) State or local funds available for the support of any educational programs which are used for purposes of providing programs of the types described in paragraph (h)(1) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.132 Assurance of equal opportunity.

(a) *General.* (1) An LEA may not, on the basis of race, sex, national origin, or handicap, exclude a child from participation in services provided with Title I funds.

(2) An LEA shall ensure that all children participating in a Title I project—including handicapped children and children with limited proficiency in the English language—are provided an equal opportunity to benefit from that project.

(b) *Services for handicapped children.* (1) Except as provided in paragraph (b)(2) of this section, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure handicapped children an equal opportunity to participate in and benefit from Title I services.

Example. The LEA may use Title I funds to provide to a visually impaired participant large-print books used in a Title I reading class.

(2) However, the assistance provided by the LEA for handicapped children from Title I funds must be in addition to the assistance the LEA would otherwise be required to provide to accommodate the participation of handicapped children in non-Title I activities.

Example. If the LEA is required to provide a deaf child—under the child's individualized education program—with a sign language interpreter whose only job is to assist that one child's participation in the school's program, the LEA may not use Title I funds to pay for the services of an interpreter during the child's participation in a remedial class funded under Title I.

(c) *Services for children with limited proficiency in the English language.* (1) In providing Title I services, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure participants with limited proficiency in the English language an equal opportunity to participate in and benefit from Title I services.

Example 1. An LEA designs a Title I project which provides special tutorial assistance for educationally deprived first through fourth graders through a resource center. Among the participating students are several who have Vietnamese as their primary or home language and who are limited in their proficiency in the English language. In order to provide these children with equal access to the Title I project, the LEA includes on the resource center staff a bilingual education teacher paid for using Title I funds. The LEA also provides bilingual instructional materials, comparable to those used for English speaking children, to assist the limited English proficiency children to learn to read in English. These materials are paid for using Title I funds. The LEA has acted in compliance with paragraph (c) of this section.

Example 2. An LEA designs a Title I project to provide an intensive program of training in reading as a replacement for the regular program of reading instruction provided to first and second graders. Among those children selected to participate in the Title I project are a number of children whose primary language is French and who are limited in their proficiency in the English language. These children ordinarily receive reading instruction from a second grade teacher who is assisted by a bilingual teacher aide. The intensive program of reading instruction may be provided to these children using a bilingual teacher and bilingual aide paid for using Title I funds. However, the LEA is also obliged to allocate to the Title I project an appropriate amount of non-Title I funds (including a proportionate share of the salary of both the teacher and bilingual aide) or an appropriate number of staff as required by 34 CFR 200.94.

(42 U.S.C. 2000d-2000d-4, 20 U.S.C. 1681-1683; 29 U.S.C. 794)

SUPPLEMENT, NOT SUPPLANT: REGULAR STATE AND LOCAL FUNDS AND STATE AND LOCAL FUNDS FOR STATE PHASE-IN PROGRAMS

§ 201.133 Introduction

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from the following State and local sources for the education of children who participate in Title I projects:

(1) Regular funds; and

(2) Funds for State phase-in programs.

(b) In no case may the LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) The LEA supplants State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.134 (Equitable distribution: regular funds and State phase-in programs); and

(2) Section 201.135 (Provisions of services required by law: regular funds and State phase-in programs).

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.134 Equitable distribution: Regular funds and funds for State phase-in programs.

(a) An LEA shall distribute regular State and local funds and State and local funds for State phase-in programs in a way that does not discriminate against children who participate in Title I projects.

(b) *Presumption of violation.* An LEA is presumed to have violated the requirements of paragraph (a) of this section if it does any of the following:

(1) Uses Title I funds, in violation of 34 CFR 200.93-200.95 (related to excess costs), to pay more than the excess cost of a Title I service that the LEA is providing as a substitute for a non-Title I service that participating children would otherwise receive.

(2) Systematically assigns a greater number of pupils per teacher in classes that include children who are receiving Title I services.

(3) Denies children who receive Title I services opportunities to receive State and locally funded regular programs or State phase-in services on the same basis as other children.

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.135 Provision of services required by law: Regular funds and funds for State phase-in programs.

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Federal, State, or local law;

(ii) A court order; or

(iii) A voluntary plan for compliance approved by the Office for Civil

Rights, United States Department of Education.

(b) *Presumption of violation.* (1) The LEA is presumed to have violated the requirements in paragraph (a) of this section if the LEA—

(1) Has been subject to a court order or an approved voluntary plan for compliance specifying its obligations under Federal, State, or local law; and

(2) Uses Title I funds to provide services that it is required to provide, using State or local funds, under that court order or voluntary plan for compliance.

Example. An LEA that has been ordered by a court to provide specific remedial assistance to remedy the effects of past segregation is presumed to have violated the requirements of paragraph (a) of this section if it uses Title I funds for that purpose.

(Sec. 126(c), 20 U.S.C. 2736(c))

SUPPLEMENT, NOT SUPPLANT: SPECIAL STATE AND LOCAL PROGRAMS

§ 201.136 Introduction.

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from State and local sources for special programs for the education of educationally deprived children in the aggregate in Title I eligible school attendance areas and schools.

(b) In no case may an LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) An LEA supplants special State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.137 (Equitable distribution: special State and local programs); or

(2) Section 201.139 (Provision of services required by law: special State and local programs (general)).

(Sec. 126(d), 20 U.S.C. 2736(d))

§ 201.137 Equitable distribution: Special State and local programs.

(a) *General rule.* Except as provided in paragraph (c) of this section, an LEA shall distribute State and local funds for special programs in a way that does not discriminate against educationally deprived children in the aggregate in Title I eligible school attendance areas or attending Title I eligible schools.

(b) *Demonstration of compliance.* In order to demonstrate that it has met the requirement of paragraph (a) of this section, the LEA shall—

(1) Provide the SEA with satisfactory assurances that it equitably distributes State and local funds for each special program of an appropriate level so as—

(i) To meet the special needs of educationally deprived children in Title I eligible school attendance areas and schools; and

(ii) To avoid discrimination against educationally deprived children in Title I eligible school attendance areas and schools; and

(2) Make available to its SEA and to others, on request—

(i) Evidence that it distributes a proportionate share of State and local funds available under each type of special program, as applicable, for the education of educationally deprived children in Title I eligible school attendance areas and schools;

NOTE: The method for calculating proportionate share is contained in § 201.138, or

(ii) Evidence of the extent to which it distributes a proportionate share of State and local funds referred to in paragraph (b)(2)(i) of this section and evidence that its failure to provide a full proportionate share results from—

(A) A disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures;

(B) A disproportionate distribution, within the LEA, of children whose instruction related to their lack of proficiency in the English language requires particularly high expenditures; or

(C) Distribution of State and local funds in compliance with the limited exemption described in paragraph (c) of this section.

(c) (1) *Limited exemption.* The LEA may use additional State and local funds for special programs and projects that are solely for educationally deprived children residing in non-project areas or attending non-project schools, including school attendance areas and schools ineligible for assistance under Title I, so long as the requirements of paragraph (c)(2) of this section are met.

(2) The LEA qualifies for the exemption described in paragraph (c)(1) of this section if all of the following conditions are satisfied:

(i) The LEA uses special State and local funds to provide a special program, as defined in § 201.118(b) (1) through (3), that qualifies under § 201.118 or exclusion from the comparability and excess cost requirements of §§ 201.111-201.123.

(ii) The amount of State and local funds provided by the LEA during a particular fiscal year in eligible school attendance areas and schools for purposes of the special program referred to in paragraph (c)(2)(i) of this section, when added to the amount of funds provided for the LEA's Title I project during that year, equals or exceeds the amount the LEA is eligible to receive for that fiscal year under section 111(a)(2) of Title I (referring to how the amount of a grant is determined), without regard to adjustments under section 193 of Title I (Adjustments where necessitated by appropriations).

(3) The amount of limited exemption provided in paragraph (c)(1) of this section is calculated as follows:

(i) *Step 1.* The LEA adds the following:

(A) Title I funds provided to project areas in the LEA; and

(B) State and local funds provided to project areas in the LEA for the special program referred to in paragraph (c)(2)(i) of this section.

(ii) *Step 2.* The LEA determines the number of children, in project areas, who participate in either—

(A) Title I projects; or

(B) The special program referred to in paragraph (c)(2)(i) of this section.

(iii) *Step 3.* The LEA divides the sum of the amounts in Step 1 by the number of children in Step 2.

(iv) *Step 4.* The LEA determines the number of children in non-project areas who are eligible to participate in the special program referred to in paragraph (c)(2)(i) of this section.

(v) *Step 5.* The LEA multiplies the amount in Step 3 by the number in Step 4. This is the amount of the limited exemption.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.138 Procedures for determining proportionate share.

(a) In order to calculate proportionate share for purposes of § 201.137(b)(2)(i) (related to equitable distribution), and LEA takes the following steps:

(1) *Step 1.* The LEA uses objective criteria, described in § 201.143(b)(2)(iii) to identify the total number of children in all of its school attendance areas who are eligible for each of the following types of special programs, if applicable;

(i) State compensatory education programs.

(ii) Local compensatory education programs.

(iii) Bilingual programs for children with limited proficiency in the English language.

(iv) Special education programs for handicapped children.

(2) *Step 2.* The LEA then identifies, in all of its title I eligible school attendance areas and schools, the total number of children who are eligible for each type of special program referred to in Step 1.

(3) *Step 3.* For each type of special program, the LEA divides the number of children identified in Step 2 by the number of children identified in Step 1. The result may be expressed as either a fraction or a percentage.

(4) *Step 4.* For each type of special program, the LEA lists the amount of funds that it proposes to distribute during the current fiscal year in all its school attendance areas.

(5) *Step 5.* For each type of special program, the LEA multiplies—

(i) The fraction or percentage calculated in Step 3; by

(ii) The amount of funds for that program listed in Step 4.

(iii) The result of this multiplication for each type of special program is the amount of funds that the LEA is obligated to provide, under that type of program, in Title I eligible school attendance areas and schools. This is the proportionate share.

(b) The LEA will be presumed to have provided a proportionate share of special funds for each type of special program so long as it expends, in Title I eligible school attendance areas, no less than an amount equal to 98 percent of the amount calculated in Step 5 for that special program.

Example 1. There are 200 children in an LEA who fail to achieve a passing score on a State minimum competency test. Of these children, 150 (75 percent) are in Title I eligible school attendance areas. $40,000 in State funds are available to the LEA to provide compensatory education to children who fail to pass the State minimum competency test. The LEA must expend a proportionate share—at least $30,000 (that is, 75 percent of $40,000)—for the benefit of eligible children in title I eligible school attendance areas.

Example 2. There are 1,000 handicapped children in an LEA. Of these children, 600 (60 percent) are in title I eligible school attendance areas and schools. The LEA expends $500,000 in State and local funds on special education programs for handicapped children. The LEA must spend a proportionate share—at least $300,000 (that is, 60 percent of $500,000)—for the benefit of handicapped children in title I eligible school attendance areas and schools, unless the LEA can demonstrate that its failure to do so results from a disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures.

Example 3. There are 600 children with limited proficiency in the English language in an LEA. Of these children, 450 (75 percent) are in title I eligible school attendance areas and schools and have Spanish as their primary or home language. Of the 200 children who are not in Title I eligible school attendance areas or schools, 150 have Vietnamese as their primary or home language, and 50, who have just arrived in the United States, have Korean as their primary language. State and local funds for bilingual programs total $160,000. The LEA must spend a proportionate share—at least $120,000 (that is, 75 percent of $160,000)—for the benefit of children with limited proficiency in the English language in Title I eligible school attendance areas and schools, unless the LEA can demonstrate that the costs of providing services to the Vietnamese and Korean children, for example, are disproportionately high.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.139 Provision of services required by law: Special State and local funds (General).

(a) An LEA may not use Title I funds to provide special services—

(1) That the LEA is otherwise required to make available under Federal, State, or local law; and

(2) For which the LEA is required to pay using State or local funds.

(b) The LEA shall comply with the requirements of §§ 201.140-201.142, as applicable.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.140 Provision of services required by law: Special State and local programs (Handicapped children).

(a) *General rule.* An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(1) Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142 (20 U.S.C. 1401 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 29 U.S.C. 706), as amended;

(3) The regulations governing the administration of either of those statutes; or

(4) A court order.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements in paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), and (e) of this section, as applicable.

(c) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition.

(ii) The LEA sets overall project objectives that do not distinguish between handicapped and non-handicapped participants.

(iii) The LEA—

(A) Through the use of uniform criteria, selects children for participation on the basis of educational deprivation, not on the basis of handicap; and

(B) Selects as participating handicapped children only those who can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of non-handicapped children, as well as handicapped children, if any.

(v) The LEA provides Title I services at intensities taking into account the needs and abilities of individual participants but without distinguishing generally between handicapped and non-handicapped participants with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in the selection of children for participation on the basis of handicap; and

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

Example. An LEA plans a Title I project to increase children's reading proficiency by two grade levels. The LEA plans to accomplish this goal through intensified instruction in the form of tutorial assistance given several times a week in hour-long sessions using additional personnel. Children's eligibility for inclusion in the project is based on their classroom performance and reading achievement test scores.

Of the 100 children selected for participation in the project using these criteria, 10 (10 percent, a proportion approximately comparable to the percentage of handicapped children in the LEA's Title I eligible school attendance areas) are handicapped children with learning disabilities who receive special education in a resource room for portions of the school day. The LEA does not select for participation any child who would require substantial modification in the educational level of the subject matter or the intensity of instruction in order to make substantial progress toward accomplishing project objectives.

None of the small groups in which instruction is provided consists solely of learning disabled children, since it is possible to group these children (by age and instructional needs) with non-handicapped participants. Although individual handicapped and non-handicapped children receive additional time and attention to assist them to meet project objectives, handicapped children do not generally receive more intensified instruction than non-handicapped children as part of their tutorial sessions.

In this case, the LEA has designed its project to address special needs resulting from educational deprivation, not a handicapping condition, and has established project objectives that do not distinguish between handicapped and non-handicapped children. It has selected children using uniform criteria, and has not selected on the basis of handicap. The Title I services are provided in a common educational setting, which includes non-handicapped as well as handicapped children, using intensities of instruction that vary from child to child, but that are not substantially different for handicapped and non-handicapped children.

The SEA in this case determines that the LEA has complied with the requirements of paragraph (a) of this section.

(d) *Common services and separate setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (c)(1)(i) through (iii) of this section.

(ii) The services are provided to handicapped participants in a separate educational setting that does not include non-handicapped children so long as the requirements of paragraph (d)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(v) Information demonstrating that an LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) Uses a different intensity of instruction attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services are provided to other Title I participants;

(ii) (A) Participating handicapped children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantial modification of the educational level of the subject matter or the intensity of instruction, but that

(B) The nature of the children's handicapping condition precludes participation in a Title I program including non-handicapped children; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA designs a Title I project to teach remedial math skills to children in grades 4 through 6 in order to increase their performance by two grade levels. As a criterion for selection, the LEA uses children's performance on a math achievement test. Of the 100 children selected to participate—in this case, those who scored between the 5th and the 16th percentile on a math achievement test—10 are emotionally disturbed.

In its project application, the LEA demonstrates that, based on assessments prepared in connection with development of the handicapped children's individualized educational programs, including a review of their past performance, these children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantially modifying the educational level of the subject matter or the intensity of instruction. The LEA also demonstrates that, in order to effectively meet project goals, the emotionally disturbed children, whose condition precludes instruction in a classroom with non-handicapped children at the usual 15-to-1 ratio, must receive instruction in a different location or at a different time.

The LEA has provided an adequate justification for serving the emotionally disturbed children in a separate educational setting and has demonstrated compliance with the requirements of paragraph (e)(3)(ii) of this section.

(e) *Intensified services and common setting.* (1) The LEA provides services with all of the following characteristics—

(i) The services have those characteristics described in paragraphs (c)(1)(i) through (c)(1)(iv) of this section;

(ii) The services are provided using different intensities of instruction for handicapped and non-handicapped participants so long as the requirements of paragraph (e)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by demonstrating that—

(i) (A) It has a substantial basis for concluding that the handicapped children participating in the Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(B) The services are provided as part of a replacement project involving handicapped children which satisfies the requirements of 34 CFR 200.94(f); or

(ii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA proposes to establish a replacement project in basic skills for third and fourth graders. The project is to run for two hours per day. The LEA proposes to include in its project 5 mildly mentally retarded children who ordinarily participate in regular classroom activities for 2 hours per day, but who would otherwise receive instruction in basic skills from a special education teacher during the other four hours of the day. The Title I project will replace two of the four hours of instruction by the special education teacher for these children.

The LEA provides information demonstrating that the five mildly mentally retarded children can reasonably be expected to make substantial progress toward meeting project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

A full-time teaching load for a teacher of special education is 15 students for 6 hours per day. Instruction of five students for 2 hours per day equals 1/9 FTE (5 students divided by 15 students per FTE times 2 hours divided by 6 hours per day teaching load). The LEA agrees to allocate 1/9 times the average salary for special education teachers in the district to be paid from non-Title I funds, to provide a part-time teacher aide who works exclusively with the handicapped children by giving them tutorial assistance two days a week during one of the two hours in which they participate in the Title I project.

The SEA approves the LEA's proposal as satisfying the requirements of paragraph (e)(3) of this section.

(Sec. 126(a), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 20 U.S.C. 1401; 29 U.S.C. 706)

§ 201.141 Provision of services required by law: Special State and local programs (children whose primary or home language is other than English)

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4).

(ii) The regulations governing the administration of that statute; or

(iii) A court order.

(2) (i) The provisions of this section shall apply to LEAs whose primary language of instruction is not English.

(ii) In the case of LEAs of this type, the language the LEA ordinarily uses to provide instruction shall be deemed substituted for "English" wherever this word is used in this section.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements of paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), (e), and (f) of this section, as applicable.

(c) *Court order, voluntary plan for compliance, or compliance review.* (1) The LEA satisfies the requirements of paragraph (a) if it has the characteristics described in paragraph (c)(2) or (c)(3) of this section.

(2) The LEA—

(i) Has been subject to a court order, or has entered into a voluntary plan for compliance specifying its obligations under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4); and

(ii) Uses Title I funds to provide only services other than those it is required to provide under this court order or voluntary plan for compliance.

(3) The LEA—

(i) Has, within the previous five years, been the subject of a review for compliance and has been found in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4); and

(ii) Includes in its project application information demonstrating that it continues to use non-Title I funds to provide services provided at the time of the compliance review.

(d) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language.

(ii) The LEA sets overall project objectives that do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English.

(iii) Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of their primary or home language.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English.

(v) The LEA provides Title I services taking into account the needs and abilities of individual participants but without distinguishing generally between children whose primary or home language is other than English and children whose primary or home language is English, with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

Example. An LEA designs a project to increase by two grade levels the reading proficiency of children in grades 3 and 4 who score below the 25th percentile on reading achievement tests. It selects 200 participants, 120 of whom have Spanish as their primary or home language and who have varying degrees of proficiency in English, and 80 of whom have English as their primary or home language. The LEA provides instruction in a common educational setting as part of a program which includes children of both language backgrounds by using a bilingual aide to provide an in-class program of special assistance. All of the children receive individualized attention, as needed, to assist them to benefit from the instruction.

The LEA provides, upon request, information demonstrating that the proportion within the participant group of children with a Spanish-language background is approximately comparable to the proportion of similar children in the LEA's Title I eligible school attendance areas. It also provides information that all children who require special instruction under Title VI, regulations, or court order receive such instruction during part of the regular school day that is unaffected by the Title I program.

Since the LEA has designed its project, set common objectives, selected participants and provided instruction at a comparable intensity in a common educational setting including children with Spanish and English language backgrounds, the SEA determines that the LEA has complied with the requirements of paragraph (a) of this section.

(e) *Common services and separate setting.* (1) The LEA provides services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (d)(1)(i) through (iii) of this section.

(ii) The services are provided to participants whose primary or home language is other than English in a separate educational setting that does not include participants whose primary or home language is English so long as the requirements of paragraph (e)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater that the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language;

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction; and

(v) Information demonstrating that—

(A) The LEA provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) The LEA's use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services provided to other Title I participants;

(ii) (A) The program is a replacement program satisfying the requirements of 34 CFR 200.94(f); and

(B) The LEA provides assurances that comparable services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English as well as children, if any, whose primary or home language is other than English; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA selects 90 second graders to participate in a Title I basic skills program which will provide intensive instruction for three hours of the normal six hour school day. Thirty of the children have Vietnamese as their primary or home language, and lack proficiency in the English language. All of the children are drawn from second grade classes taught by regular teachers, assisted by teacher aides qualified in bilingual education. Both the teachers and the aides are assigned at a 25-to-1 pupil-instructor ratio. The aides assist both the Vietnamese- and English-speaking children on an as-needed basis.

The LEA proposes to divide the children into six classes of 15 students each. The Vietnamese-speaking children will be assigned to two of the classes, to allow them to receive instruction, where necessary, in Vietnamese so as to assist them in improving their English-language skills as quickly as possible. These children will be instructed by a qualified bilingual education teacher, who will be assisted by a teacher aide. The other four classes will also be instructed by a teacher and a teacher aide.

In its project application, the LEA agrees to allocate to the Title I project 1.8 times the average salary of a second grade teacher (90 students divided by 25 students per FTE instructor times .5 since the program is half-time only). It also assigns four teacher aides on a half-time basis to assist in the Title I project, since, as described in 34 CFR 200.94, it may allocate either funds or instructional staff. It also demonstrates that comparable services are provided to children receiving Title I services in a common educational setting, since those children also receive instruction from a teacher and teacher aide at a comparable pupil-teacher ratio.

The SEA concludes that the LEA has satisfied the requirements of paragraph (e)(3) of this section.

(f) *Intensified services and common setting.* (1) The LEA provides services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (d)(i) through (iv) of this section;

(ii) The services are provided using different intensities of instruction for children whose primary or home language is other than English and children whose primary or home language is English, so long as the requirements of paragraph (f)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by—

(i) (A) Demonstrating that the services are part of a replacement program, involving children whose primary or home language is other than English, which satisfies the requirements of 34 CFR 200.94(f); and

(B) Including satisfactory assurances that it provides comparable special instructional services using non-Title I funds or expends a comparable per capital amount of non-Title I funds to provide participating children with special instruction as it does to provide such instruction to non-participating children whose primary or home language is other than English; or

(ii) Demonstrating that use of different intensities of instruction is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA selects 90 third and fourth graders to participate in a half-time basic skills program. Sixty of the children have English as their primary or home language. They are drawn from regular third and fourth grade classrooms having a 25 to 1 pupil teacher ratio. Teachers in these classrooms are unassisted by teacher aides. The other thirty children have Spanish as their primary or home language, and are very limited in their English proficiency. They are drawn from two classrooms in which the regular teacher is assisted by a bilingual teacher aide who is assigned to assist limited English proficient children at a 20 to 1 pupil-teacher ratio.

Under its Title I project, the LEA proposes to divide the 90 children into six classes of 15 children each. Five Spanish-speaking children who have limited proficiency in the English language are to be assigned to each of the six classes. Bilingual teacher aides will provide assistance to all the children, but will give particularly intensive tutorial assistance to the children whose primary language is Spanish.

In its project application, the LEA provides assurances that its per capita expenditures for providing participating children whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act are comparable to expenditures for similar non-participating children (all would be assigned to a classroom with a bilingual teacher aide assigned to provide instruction at a 20 to 1 pupil-teacher ratio). The LEA also agrees to allocate to the Title I project 1.8 times the average salary for third and fourth grade teachers (90 students divided by 25 students per FTE teacher times .5 since the program is half-time only). In addition, it agrees to allocate .75 times the average salary of a bilingual teacher aide (30 students requiring bilingual instruction divided by 20 students per FTE bilingual teacher aide times .5 since the program is half-time only).

The SEA concludes that the LEA has satisfied the requirements of paragraph (f)(3) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 42 U.S.C.

2000d-2000d-4; *Lau v. Nichols*, 414 U.S. 563 (1974))

§ 201.142 Provision of services required by law: Special State and local programs (Compensatory education or other services required by State or local law).

(a) An LEA may not use Title I funds to provide compensatory education or other services that the LEA is required to make available under State or local law.

(b) However, the LEA may use Title I funds to supplement its expenditures for compensatory education or other required services if the LEA can demonstrate that—without the use of Title I funds—it is fully meeting its obligations under State or local law.

(c) The LEA can demonstrate that it is fully meeting its obligations under State law if—

(1) Appropriate State and local officials certify to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

(d) The LEA can demonstrate that it is fully meeting its obligations under local law if—

(1) An appropriate local official certifies to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

Example. An LEA's Title I project provides intensive reading instruction to children who have failed to pass a State minimum competency test. State law requires that special compensatory instruction be provided to those children as part of a program meeting the definition of special program in § 201.118(b). However, the law does not specify the level or intensity of instruction. The SEA, on the advice of the State Attorney General, certifies that LEAs within the State may satisfy the requirements of State law by providing children with a one-semester course in remedial English if that course meets at least three times per week and has a pupil-teacher ratio comparable to the LEA's normal pupil-teacher ratio. The LEA certifies that this type of special course is being provided for eligible children. The LEA may therefore use Title I funds to provide educationally deprived children in Title I eligible school attendance areas with additional class periods or remedial reading or to provide—to children selected for participation in the Title I project—instruction using a reduced pupil-teacher ratio.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.143 Coordination.

An LEA may take into account and may coordinate State and local special programs, as defined in § 201.118(b), with projects funded under Title I if the LEA meets all of the following conditions:

(a) The LEA satisfies the requirements of—

(1) This part, including, but not limited to—

(i) Sections 201.132-201.143 (requirements that Title I funds be used to supplement, not supplant funds from State and local sources); and

(ii) Sections 201.65 and 201.71 (requirements related to the skipping of higher-ranked school attendance areas and schools and the skipping of children determined to be in greatest need of special assistance but receiving services of the same nature and scope from non-Federal sources); and

(2) Other applicable Federal requirements, such as the requirements of Part B of the Education of the Handicapped Act, 20 U.S.C. 1401, *et seq.*

(b) (1) The LEA satisfies the requirements of paragraph (b)(2) so as to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds that would have been available to such children in the absence of Title I.

(2) (i) The LEA develops a plan for distribution of special funds, based on objective criteria, as defined in paragraph (b)(2)(iii) of this section.

(ii) The LEA uses objective criteria to determine, in each of the following:

(A) Children.

(B) Schools.

(C) Grade spans.

(D) School attendance areas.

(iii) Objective criteria include any one or combination of the following:

(A) Direct indicators of educational need.

(B) A reasonable proxy for educational need; or

(C) Level of poverty.

(c) The LEA ensures that educationally deprived children who satisfy the objective criteria described in paragraph (b) of this section receive assistance under either Title I or under the special State or local program before any child who does not satisfy those objective criteria receives that type of assistance.

Example. An LEA has four school attendance areas, two of which are eligible for Title I assistance and two of which are not. The LEA designs a Title I project to provide special assistance in reading to children in the first quartile in reading achievement. It selects children for participation as required under Title I. One hundred children are selected in each of the two Title I eligible school attendance areas.

Under State law special funds are provided for the compensatory education of children from kindergarten through grade 6 who rank in the first and second quartile in reading achievement, through programs which meet criteria contained in § 201.118(b). The LEA desires to provide children eligible for assistance under this program with special reading instruction that costs $300 per participant.

The LEA develops a plan for distribution using the objective criteria specified by State law (reading achievement in the first and second quartile). The LEA determines that 200 children in each of the areas eligible for Title I and 50 children in each of the areas not eligible for Title I are eligible for services under the special State program. The LEA is allocated $75,000 in State funds under the special State compensatory education program. Since 80 percent of the children eligible for services under the special State program (400 of the 500 total) are in areas that are eligible for Title I and 20 percent (100 of the 500 total) are in areas that are not eligible for Title I, the LEA distributes $60,000 (that is, 80 percent of $75,000) for use in areas that are eligible for Title I. The $60,000 in State funds allocated to provide compensatory education services to children in the Title I eligible school attendance areas under the special State program is sufficient to allow 200 of the 400 eligible children to participate. These State funds may be distributed in several ways to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds as would have been available in the absence of Title I:

(1) For example, they may be used to provide services to 100 children in each Title I eligible school attendance area, with Title I funds used to provide comparable services to the additional 100 children in each area.

(2) Alternately, for example, they may be used to provide services to the 200 eligible children in one of the Title I eligible school attendance areas, with Title I funds used to provide comparable services to the 200 eligible children in the other Title I eligible area.

(3) In each case, the children in the school attendance area served using State funds must receive services of the same nature and scope as the services provided under Title I.

(4) In no case, however, may the LEA use Title I funds to pay for this special program of reading instruction for children in school attendance areas not eligible for Title I.

(Sec. 126(d), 20 U.S.C. 2736(d))

§ 201.144 Prohibition against considering Title I funds in determining State aid.

(a) Except as provided in paragraph (b) of this section, a State may not consider Title I funds in determining—

(1) The eligibility of an LEA for State aid; or

(2) The amount of State aid to be paid to the LEA for the free public education of children.

(b) The State may provide additional State funds to an LEA on the basis of the LEA's eligibility for, or receipt of, Title I funds.

(Sec. 174, 20 U.S.C. 2814)

[46 FR 18977, Mar. 27, 1981]

§§ 201.145–201.149 [Reserved]

Subpart I—Parental Involvement

§ 201.150 Purpose of advisory councils.

The purpose of the advisory councils that LEAs are required to establish under this subpart is to encourage the involvement of parents in the planning, implementation, and evaluation of projects operated by the LEAs as an important means of increasing the effectiveness of Title I projects.

(Sec. 125, 20 U.S.C. 2735)

§ 201.151 Advisory councils that LEA's shall establish.

An LEA that receives Title I assistance—

(a) Shall establish, under the requirements in §§ 201.152–201.154, a district advisory council for the entire school district of the LEA; and

(b) Except as provided in § 201.155(c), shall establish, under the requirements of §§ 201.155-201.158—

(1) A project area advisory council for each school attendance area that is selected as a project area under § 201.61 and §§ 201.63-201.66; and

(2) A project school advisory council for each school that is selected as a project school under §§ 201.62-201.65.

(Sec. 125, 20 U.S.C. 2735)

§ 201.152 Composition of membership on district advisory councils.

A district advisory council must—

(a) Have a majority of members who are parents of children (including parents of private school children) to be served by the project. These parents include—

(1) Parents of children who have been selected, under §§ 201.70-201.71 and § 201.103, to participate in the Title I project during the current project year; and

(2) Parents of children who were not selected to participate in the Title I project during the current year, but who have been selected to participate in the Title I project during the next project year;

(b) Include at least two members—who may be any individuals that meet the requirements in paragraph (c) of this section—who represent—

(1) Children who, under §§ 201.70-201.71 and § 201.101, are eligible to receive Title I services during the current project year, but who were not selected, under §§ 201.70-201.71 and § 201.103, to participate in the current Title I project; and

(2) Children in school attendance areas and schools that, under §§ 201.51-201.52, would be eligible to receive Title I assistance during the current project year, but that were not selected, under §§ 201.60-201.66, to receive that assistance; and

(c) Include additional members, if any, elected under the procedures in §§ 201.153-201.154, who are—

(1) Residents of the LEA; or

(2) Teachers in the LEA's project schools or schools serving project areas, but not necessarily residing in the LEA's district.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.153 Models for nominating and electing district advisory councils.

(a) After consulting with the current district advisory council, an LEA shall adopt a procedure for nominating persons for election as members of the district advisory council.

(b) After consulting with the current district advisory council, an LEA shall select one of the following models for electing members of the district advisory council:

(1) Election by parents of children in project areas and project schools, including—

(i) Parents of children in project areas who attend private schools; and

(ii) Parents of preschool children, if the project provides preschool services.

(2) Election by members of the project area advisory councils and project school advisory councils elected under § 201.157.

(c) (1) In addition to the members elected under one of the methods in paragraph (a) of this section, the LEA shall provide for the election of at least two representatives of the children referred to in § 201.152(b).

(2) The representatives referred to in paragraph (c)(1) of this section must be elected by parents of children in school attendance areas and schools that were identified as eligible to receive Title I assistance, but that were not selected to receive that assistance.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.154 Procedures for electing district advisory councils.

(a) *Notice of procedures.* The LEA shall—

(1) Establish nomination and election procedures in consultation with the district advisory council; and

(2) Provide appropriate and timely notice of these procedures to—

(i) Members of all of the LEA's advisory councils;

(ii) Parents of children in project areas and project schools;

(iii) Parents of eligible-but-not-participating children and of children in eligible-but-not-participating school attendance areas and schools; and

(iv) The general public.

(b) *List of candidates.* (1) Except for the provisions in paragraph (b)(2) of this section, the LEA shall provide the electorate—those persons who will elect the members of the district advisory council according to one of the models in § 201.153(a)—with a list of candidates that identifies each candidate as—

(i) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(ii) A teacher in a project school or a school serving a project area; or

(iii) A resident of the school district of the LEA who is seeking membership on the district advisory council, but who does not qualify under paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(2) The LEA shall provide the parents referred to in § 201.153 (c)(2) with a list of candidates who are seeking election as representatives of the children referred to in § 201.152(b).

(c) *Procedures to ensure required membership on the district advisory council.* The LEA shall, in consultation with the district advisory council, establish procedures to ensure annually that—

(1) A majority of the members referred to in § 201.152 who are serving on the district advisory council are parents of children to be served; and

(2) At least two representatives of the children referred to in § 201.152 (b)(1)-(2) are serving on the district advisory council.

(d) *Election of district advisory council members in a district with a single school attendance area.* An LEA with only one school attendance area may, without regard to the number of schools serving that area, have one project area advisory council that is also its district advisory council.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.155 Required project area advisory councils and project school advisory councils.

(a) *General rule.* An LEA that receives Title I assistance shall establish project area advisory councils and project school advisory councils as required in § 201.151(b).

(b) *Special application to private school children.* An LEA that has skipped an eligible school attendance area under § 201.65, because that area is receiving services of the same nature and scope from non-Federal sources as would otherwise be provided with Title I funds, shall establish a project area advisory council for that school attendance area if there are private school children residing in the area who are receiving Title I services.

(c) *Exception.* An LEA is not required to establish an advisory council for any project area or project school in which—

(1) Not more than one full-time equivalent staff member is paid with Title I funds; and

(2) Not more than 40 students receive Title I services.

(Sec. 125(a), 20 U.S.C. 2735(a), Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.156 Membership of project area advisory councils and project school advisory councils.

(a) *Composition.* Each project area advisory council and project school advisory council must—

(1) Have a majority of members who are parents of children to be served, as described in § 201.152(a) and who are elected under the procedures in § 201.157; and

(2) Include any additional members elected by the parents of children in the project area or project school under the procedures in § 201.157.

(b) *Eligibility.* (1) Except as provided in paragraph (b)(2) of this section, a person must be a resident of the school district of the LEA in order to be elected to serve as a member of a project area advisory council or project school advisory council.

(2) Any teacher in a project school or school serving a project area in the LEA's district may, without regard to place of residence, be elected to serve as a member of a project area advisory council or project school advisory council for that area or school.

(c) *Requirements if 75 or more children are served.* If a project serves 75 or more children in a project area or project school, the advisory council for that area or school must be composed of at least eight members who shall—

(1) Serve for two-year terms, after which they may be reelected;

(2) Elect officers from among their membership after the council has been fully constituted;

(3) Determine a meeting schedule that provides for a sufficient number of meetings per year to enable the council to be involved effectively in planning, implementing, and evaluating the project; and

(4) Determine the locations for council meetings.

(d) *Procedures to ensure required membership on project area advisory councils and project school advisory councils.* The LEA, in consultation with its district advisory council, shall establish procedures to ensure annually that—

(1) A majority of the members referred to in paragraph (a) of this section are parents of children to be served; and

(2) Advisory councils for project areas and project schools serving 75 or more children have at least 8 members as required in paragraph (c) of this section.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.157 Procedures for electing project area advisory councils and project school advisory councils.

In consultation with its district advisory council, an LEA shall establish procedures for the election of project area advisory councils and project school advisory councils, including procedures for—

(a) (1) Identifying the parents of—

(i) Children attending a project school;

(ii) Children attending a school serving a project area; and

(iii) Children who would attend a school described in paragraph (a)(1)(i) or (ii) of this section if they were not attending a private school; and

(2) Notifying these parents of—

(i) Their opportunity to participate in the election;

(ii) The date, time, and place of the election; and

(iii) The purpose of the election and the election procedures.

(b) Notifying the general public in each project area of the date, time, method, and place of the election;

(c) Providing the parents identified in paragraph (a) of this section with the names of the persons who desire to be candidates, and indentifying each candidate as—

(1) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(2) A teacher in a project school or a school serving a project area; or

(3) A resident of the school district of the LEA who does not qualify under paragraph (c) (1) or (2) of of this section; and

(d) Making the names of all members of the project area advisory councils and project school advisory councils available to the general public on request and through appropriate notices.

(e) The LEA shall take appropriate measures, such as publishing the election procedures in a language other than English, to ensure that adequate notice is provided to parents in areas where the dominant language in not English.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.158 An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.

(a) (1) The responsibility of an LEA to establish advisory councils does not authorize it to limit the freedom of eligible parents to elect advisory council members, except to ensure that the requirements in §§ 201.150-201.157 are met.

(2) The LEA may not impose any other restrictions on the rights of eligible parents to elect members of advisory councils.

(b) For example, the LEA is not authorized to—

(1) Restrict the number of terms individual parents may serve;

(2) Prevent a husband and wife from serving at the same time on the same advisory council; or

(3) Prevent school employees who are otherwise qualified from being elected.

(c) The LEA may not restrict advisory council members in their choice of individuals to serve as officers of their councils.

(Sec. 125, 20 U.S.C. 2735)

§ 201.159 Participation by advisory councils.

(a) *General.* An LEA shall give each of the advisory councils established under § 201.151 responsibility for advising the LEA in planning, implementing, and evaluating the project.

(b) *Comments on project application.* An LEA shall—

(1) Give its district advisory council an adequate opportunity to submit comments and recommendations on the LEA's project application;

(2) Consider the district advisory council's comments and recommendations; and

(3) Inform the district advisory council in writing of its reasons for adopting or rejecting the district advisory council's comments and recommendations.

(c) *Alternative ranking based on educational deprivation.* If the LEA desires to use the alternative ranking procedures in § 201.66, it must obtain the prior consent of its district advisory council.

(d) *Schoolwide projects.* If the LEA desires to seek SEA approval of a plan for a schoolwide project under § 201.73, the project area advisory council for the school attendance area served by the school must first approve the plan.

(Sec. 122, 20 U.S.C. 2732; Sec. 125(b), 20 U.S.C. 2735(b); Sec. 133, 20 U.S.C. 2753)

§ 201.160 Information that an LEA shall provide to advisory councils.

(a) *Basic requirement.* An LEA shall provide, without charge, to each advisory council and to each member of an advisory council who requests a copy—

(1) The Title I statute;

(2) Any Title I regulations, interpretive rules, and guidelines;

(3) Any State regulations and guidelines that apply to Title I projects; and

(4) The LEA's current project application.

(b) *Auditing, monitoring, and evaluation reports.* The SEA shall provide to each LEA's district advisory council, a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities concerning the Title I project in that LEA.

(c) *Auditing, monitoring, and evaluation information.* Upon request, the SEA shall provide to each LEA's district advisory council—

(1) Notice of the SEA's final action on audit appeals resolved under 34 CFR 200.192 and any corrective action that the audited agency must take;

(2) Dissemination of information concerning exemplary Title I projects and particularly effective elements of Title I projects identified in 34 CFR 200.230(g).

(Sec. 125(c), 20 U.S.C. 2735(c))

§ 201.161 Training for members of advisory councils.

(a) *Basic requirement.* An LEA shall develop a program for training members of each advisory council to carry out their responsibilities under the Title I project. This program—

(1) Must be planned in full consultation with the members of the advisory councils;

(2) Must provide each member of the advisory councils with appropriate training materials; and

(3) May permit the use of Title I funds for expenses of the training program.

(b) *Training that involves travel.* The LEA shall provide training for advisory council members at convenient locations within the LEA. However, if it is cost effective, one or more LEAs may provide training at a location outside those LEAs in conjunction with another LEA that is receiving Title I assistance.

(c) *Regional or national conferences.* (1) The LEA may not include attendance at a regional or national conference as part of its training program for advisory council members, unless—

(i) The Secretary determines in advance that attendance at the conference will provide unique and valuable experiences; and

(ii) The SEA determines in advance that the conference is relevant to the LEA's project and to the functions of each advisory council member who will attend the conference.

(2) The LEA shall limit the number of advisory council members attending a regional or national conference at Title I expense to the minimum number of council members required to communicate effectively to other members the information presented at the conference.

(d) *Workshops on parental involvement.* (1) For each fiscal year for which Title I payments are made to the SEA and funds are appropriated under section 125(g) (Authorization of appropriations) of Title I, the Secretary sponsors, in the several regions of the United States, workshops that are designed to—

(i) Assist LEA's to work with and provide training to advisory councils; and

(ii) Promote parental involvement in the Title I projects.

(2) These workshops are planned and conducted in consultation with members of advisory councils in the region served by each workshop.

(Sec. 125, 20 U.S.C. 2735)

§ 201.162 Allowable expenditures for advisory councils.

(a) The general standards governing the allowability of expenditures under Title I projects are contained in 34 CFR 200.70-200.83.

(b) In addition to meeting the standards in 34 CFR 200.70-200.83, an LEA may not pay or reimburse any expenditures relating to advisory councils unless those expenditures are—

(1) Authorized in advance by the LEA;

(2) Within the scope of the LEA's approved Title I project application; and

(3) In compliance with the specific standards in paragraph (c) of this section.

(c) The LEA shall comply with the following specific standards that apply to the use of Title I funds for expenditures related to advisory councils:

(1) *Advisory council elections.* The LEA may use Title I funds to pay for costs directly associated with advisory council elections.

(2) *Memberships in organizations.* The LEA may not use Title I funds to pay for the individual membership of an advisory council member in any organization or group.

(3) *Registration fees.* The LEA may use Title I funds to pay registration fees for advisory council members at approved training conferences.

(4) *Travel.* The LEA may use Title I funds to pay the actual cost of travel—that is, transportation, food, lodging, and related expenses—incurred by advisory council members in connection with an approved Title I activity that is within the scope of the LEA's approved project. However, the LEA may not use Title I funds for additional payments on a per diem basis.

(5) *Salary for time away from job.* The LEA may not use Title I funds to reimburse an advisory council member for salary lost because that member misses work to attend meetings, training sessions, or any other Title I related activity.

(6) *Expenses related to attendance at meetings.* The LEA may use Title I funds to pay expenses related to attendance by advisory council members at advisory council meetings. Examples of these expenses include babysitting, transportation, and copying of minutes.

(Sec. 125, 20 U.S.C. 2735; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 201.163-201.169 [Reserved]

Subpart J—Evaluations by Local Educational Agencies

§ 201.170 General evaluation requirements.

To meet its Title I evaluation responsibilities, an LEA shall comply with—

(a) The evaluation provisions in 34 CFR 200.130; and

(b) The requirements in §§ 201.171-201.177.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.171 Standards for evaluation by an LEA.

An LEA shall explain in its application how its Title I evaluation procedures are consistent with the following technical standards. The SEA shall use these same standards to determine the adequacy of the LEA's procedures.

(a) *Representativeness of evaluation findings.* The evaluation results are computed so that the conclusions apply to the persons or schools served by the Title I project. This may be accomplished by including in the evaluation either all or a representative sample of the persons or schools served by the project.

(b) *Reliability and validity of evaluation instruments and procedures.* The proposed evaluation instruments—

(1) Consistently and accurately measure the objectives of the project; and

(2) Are appropriate, considering factors such as the age or background of the persons served by the project.

(c) *Evaluation procedures that minimize error.* The proposed evaluation procedures minimize error by including—

(1) Proper administration of the evaluation instruments;

(2) Accurate scoring and transcription of data; and

(3) Use of analysis procedures whose assumptions are appropriate for the data.

(d) *Valid assessment of achievement gains in reading, language arts and mathematics.* In assessing the effectiveness of regular school year Title I reading, language arts, and mathematics projects in grades 2 through 12, the proposed evaluation procedures yield a valid measure of (1) the Title I children's performance after receiving Title I services compared to (2) an estimate of what their performance would have been in the absence of Title I services.

(e) As used in §§ 201.172-201.174 and § 201.176, a language arts project does not include a project designed to teach English to non-English-speaking children.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.172 Use of models by an LEA.

An LEA shall use one of the models in § 201.173—or an approved alternative (*see* § 201.174)—in the evaluation of each regular school year Title I project that provides instructional services in reading, language arts, or mathematics in grades 2 through 12.

(a) The models require that the LEA administer a test—

(1) Before or at the beginning of services for the project period (pre-test); and

(2) After or at the end of the project period (post-test).

(b) The models compare the post-test scores of Title I children to an estimate of what their post-test scores would have been if they had not received Title I services ("expected performance").

(c) Each model provides a different method for estimating expected performance using the scores of children not receiving Title I services who are tested at the same time of year.

(d) With any of the three models, the LEA may use a test with or without national norms.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.173 Model requirements.

(a) *Norm-Referenced Model.* An LEA using the Norm-Referenced Model shall—

(1) Administer a pre- and post-test to Title I children; and

(2) Estimate expected performance using the performance of children in a norm sample developed—

(i) Locally;

(ii) By the SEA; or

(iii) By a test publisher.

(b) *Comparison Group Model.* An LEA using the Comparison Group Model shall—

(1) Identify a comparison group of educationally deprived children who—

(i) Are similar to Title I children with respect to educationally relevant factors (such as age, socio-economic status, and previous achievement); and

(ii) Are not receiving Title I or similar compensatory education services;

(2) Administer a pre- and post-test to both the Title I children and the children in the comparison group; and

(3) Estimate expected performance for the Title I children by using the test scores of the children in the comparison group.

(c) *Regression Model.* An LEA using the Regression Model shall—

(1) Administer a pre-test to a group of children in Title I eligible schools at grade levels to be served by Title I. In the Regression Model only, the pretest may consist of a test, teacher judgment of student performance, or a composite of these;

(2) Establish a cutoff score and provide Title I services to those children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation; and

(3) Administer a post-test to both groups and estimate expected performance using the pre- post-test scores for the comparison group.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.174 Alternative models.

(a) An LEA may use an alternative to one of the three models in § 201.173 for the evaluation of regular school year reading, language arts, or mathematics projects in grades 2 through 12. An alternative model would provide a method for estimating expected performance that differs from methods provided by the three models.

(b) The use of an alternative model must be approved first by the SEA and then by the Secretary.

(c) To be approved, an alternative model must yield a valid measure of—

(1) The Title I children's performance in reading, language arts, or mathematics;

(2) Their expected performance; and

(3) The results of the Title I project expressed in the common reporting scale established by the Secretary for SEA reporting.

(d) The request for using an alternative model may be submitted to the Secretary by the LEA or the SEA acting at the request of one or more LEAs.

(e) The request must indicate how the alternative model meets the three requirements in paragraph (c) of this section.

(f) The Secretary responds to the request in writing within 30 days.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.175 Frequency of LEA evaluations.

(a) (1) An LEA shall evaluate the effectiveness of its Title I projects at least once every three years in accordance with a schedule established by the Secretary.

(2) This evaluation must include an assessment of achievement gains of Title I children compared to an estimate of their expected performance in the absence of Title I services.

(3) The LEA shall measure the achievement gains over a period of approximately either nine or twelve months. (Examples of appropriate testing intervals include fall-to-fall testing, fall-to-spring testing, and spring-to-spring testing.)

(b) At least once during the three-year period, the LEA shall collect additional information needed to determine whether the achievement gains measured over nine to twelve months are sustained over a longer period of time. (Examples of appropriate testing cycles for this long-term evaluation include fall-spring-fall testing, fall-fall-fall testing, and spring-spring-spring testing.)

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 201.176 Reports of evaluation results.

(a) *LEA reporting.* (1) (i) An LEA shall report to its SEA the results of its evaluations conducted in accordance with the schedule established by the Secretary.

(ii) (A) In reporting the results of measurements of educational achievement in regular school year projects in reading, language arts, or mathematics in grades 2 through 12, the LEA shall use the common reporting scale established by the Secretary unless the SEA approves some other form of local reporting.

(B) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common scale.

(2) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluations required by § 201.175(b).

(3) (i) The LEA shall retain all of the data used to develop its report to

the SEA for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(ii) The data to be retained must include—

(A) A record of all individual scores, with an identifying code so that pre- and post-test scores can be matched, in regular school year projects in reading, language arts, or mathematics in grades 2 through 12; and

(B) The name, form, level, and date of publication of any tests administered.

(b) *SEA reporting.* (1) *Sampling plan.* An SEA shall submit, for the approval of the Secretary, a proposed sampling plan designed to ensure that evaluations are conducted in a representative sample of its LEAs in any school year. The proposed plan shall be developed according to the schedule and criteria specified by the Secretary.

(2) *Annual performance report.* To provide nationwide information about the recipients of Title I services and the types of services delivered, the SEA shall provide in its annual performance report—for all or a representative sample of LEAs—the following information for all regular and summer projects of those LEAs included in the report:

(i) The number of participants, by type of services received.

(ii) The number of participants, by grade, who attend public schools.

(iii) The number of participants, by grade, who attend nonpublic schools.

(iv) Other information requested by the Secretary. This may include, for example, information about advisory councils and teacher training.

(3) *Biennial evaluation report.* The SEA biennial evaluation report (required by 34 CFR 200.160(a)) shall contain information about projects conducted since the last report. To provide nationwide information about the effectiveness of regular school year projects offering instructional services in reading, language arts, or mathematics in grades 2 through 12, the SEA shall include the following information for all or a representative sample of LEAs:

(i) A statewide average, by grade level, of achievement gains resulting from Title I participation expressed in the common reporting scale established by the Secretary.

(ii) For a sample of grade levels, information by grade level relating levels of achievement gain to—

(A) The number of hours of project exposure;

(B) The pupil-instructor ratio; and

(C) Project enrollment.

(iii) If applicable, the number of projects excluded because of erroneous or missing data and the reasons for their exclusion.

(iv) The SEA shall retain all the data used to develop its report for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.177 Allowable costs for evaluation.

(a) Title I funds may be used for evaluation activities to—

(1) Identify specific strengths and weaknesses of a project;

(2) Determine the results of a project; and

(3) Disseminate the results of Title I evaluations.

(b) In addition to the requirements concerning the supplementary nature of Title I funds (§§ 201.130-201.143) and other rules governing the allowability of Title I expenditures, the following rules apply to the use of Title I funds to support the purchase, administration, scoring, and analysis of evaluation instruments. Except for cases in which data meeting these needs are already available, Title I funds may be used—

(1) To test Title I participants for evaluation purposes;

(2) In the Comparison Group Model, to test an appropriate number of educationally disadvantaged children who are at the same grade level(s) as Title I participants, but who are not receiving Title I services;

(3) In the Regression Model, to test an appropriate number of children in Title I eligibile schools who are at the grade level(s) served by Title I;

(4) To administer a nationally normed test to all, or a representative sample of, the Title I participants when a test without national norms has been used for evaluation purposes. This will permit the LEA or SEA to convert its evaluation reults to the common scale; and

(5) To test an appropriate number of children no longer receiving Title I services to determine whether achievement gains measured over nine or twelve months are sustained over a longer period of time (as required by § 201.175(b)).

(c) Title I funds may not be used for—

(1) General districtwide or statewide testing programs;

(2) Establishing local or State norms; or

(3) Research and development activities, such as the development and field testing of new instruments.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§§ 201.178–201.179 [Reserved]

PART 203—GRANTS TO STATE AGENCIES FOR PROGRAMS TO MEET THE SPECIAL EDUCATIONAL NEEDS OF CHILDREN IN INSTITUTIONS FOR NEGLECTED OR DELINQUENT CHILDREN

Subpart A—General

Sec.
203.1 Applicability.
203.2 Definitions.

Subpart B—Amounts Available for Grants and Payments

203.3 Grants which a State agency is eligible to receive.
203.4 Amounts available for grants.
203.5 Determination of average daily attendance.

Subpart C—Program Requirements

203.11 Applications.
203.12 Information required in applications.
203.13 Criteria for the approval of applications.

AUTHORITY: Sec. 101(a)(2)(E), Pub. L. 93-380, 88 Stat. 494 (20 U.S.C. 241c-3), unless otherwise noted.

SOURCE: 43 FR 14292, Apr. 4, 1978, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 203.1 Applicability.

(a) *Scope.* The regulations in this part govern programs and projects for which funds are provided under section 123 of Title I of the Elementary and Secondary Education Act of 1965, as amended, to State agencies directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions, to meet the special educational needs of these children.

(b) *Regulations that apply to programs for neglected or delinquent children—(1) Regulations.* The following regulations apply to programs for neglected or delinquent children:

(i) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(ii) 34 CFR Part 200 (general requirements relating to Title I of the Act).

(iii) The regulations in this Part 203.

(2) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(i) Using regulations that apply to Department programs; and

(ii) Applying for assistance under a Department program.

(c) The text of the Title I statute is contained in full in the appendix to Part 200 of this chapter. (41 FR 42907, Sept. 28, 1976) (section 501(b)(1)(A) of Pub. L. 94-482 amends section 125 of the Title I statute by striking out "Except as provided in section 843 of the Education Amendments of 1974, no" and inserting in its place "No," while section 501(o) of Pub. L. 94-482 amends section 125 by striking out "State agency" both places it appears and inserting in its place "State.")

(20 U.S.C. 241c-3)

[43 FR 14292, Apr. 4, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 203.2 Definitions.

As used in this part, "Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Child" means a person under 21 years of age.

"Custody" means custody as defined by State law. However, for the purposes of this part a child who resides in an institution 24 hours a day is deemed to be in the custody of the public agency that assigned him or her to that institution.

"Institution" means either an institution for neglected children, an institution for delinquent children, or adult correctional institution.

"Institution for delinquent children" means a facility which is operated for the care of children who are in the custody of a public agency as a result of a determination under State law that they are either (a) delinquent or (b) in need of treatment or supervision and which has an average length of stay of at least 30 days.

"Institution for neglected children" means a facility (other than a foster home) which is operated for the care of children who are in the custody of a public agency as the result of a determination of neglect under State law, and which has an average length of stay of at least 30 days.

"State agency" means an agency of State government which is directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions. (This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency.) The term does not include an agency whose responsibility for these children is limited to the distribution of State financial assistance to other agencies which State law makes directly responsible for the free public education of these children.

(20 U.S.C. 241c-3)

Subpart B—Amounts Available for Grants and Payments

§ 203.3 Grants which a State agency is eligible to receive.

(a) From information supplied by a State agency, the Secretary shall:

(1) Determine the amount that a State agency (other than the State agency for Puerto Rico) is eligible to receive under this part for any fiscal year in accordance with the provisions of sections 123, 124, and 125 of Title I of the Act and § 203.5; and

(2) Determine the amount available for a State agency in Puerto Rico in accordance with sections 123 and 125 of Title I of the Act and § 203.5.

(b) [Reserved]

(c) For the purpose of computing an allocation under this part, the Secretary may not count a child who is counted in average daily attendance under the provisions of Part 302 (State Operated Programs for Handicapped Children) of this chapter.

(20 U.S.C. 241c-3)

[43 FR 14292, Apr. 4, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 203.4 Amounts available for grants.

The State educational agency shall notify each State agency of the amount available to it under § 203.3 and from that amount shall make funds available to the State agency equal to the cost of programs and projects approved by the State educational agency in accordance with the procedure prescribed by Subpart C of this part. The amount made available to a State agency under this section shall not exceed the amount the agency is entitled to receive under § 203.3.

(20 U.S.C. 241c-3, 241g(a))

§ 203.5 Determination of average daily attendance.

(a) To be counted in average daily attendance and eligible to receive Title I services, a child must be:

(1) In the custody of the public agency that assigned him or her to an institution;

(2) One for whom a State agency is providing a free public education; and

(3) For at least 5 hours per week in an organized program of instruction for which daily attendance records are kept.

(b) Average daily attendance is computed for each institution by: (1) Calculating from daily attendance records the total number of days of attendance in the organized program of instruction during the most recently completed school year, and (2) dividing that total by 180.

(c) For the purpose of computing average daily attendance:

(1) A child is counted as being in a full day of attendance for each day he or she attends the organized program of instruction for three (3) or more hours; and

(2) A child is counted as being in one-half (½) day of attendance for each day he or she attends the organized program of instruction for at least one (1) hour, but less than three (3) hours.

(d) For the purpose of this section, an organized program of instruction means an educational program (not beyond grade 12) which consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and which is supported by other than Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(20 U.S.C. 241c-3)

Subpart C—Program Requirements

§ 203.11 Applications.

A State agency may apply to the State educational agency for a grant or grants of Federal funds under this part in the amount authorized by §§ 203.3 and 203.4 to be used solely to meet the special educational needs of children eligible to be counted in average daly attendance in accordance with § 203.5.

(20 U.S.C 241c-3, 241e(a), 244(6)(B))

§ 203.12 Information required in applications.

The State agency shall include the following information in each application it makes to the State educational agency as authorized by § 203.11.

(a) *Institutional information.* With respect to each institution at which Title I funded services are to be provided, the application must include:

(1) The name and location;

(2) The classification (i.e., adult correctional, delinquent, or neglected);

(3) The total population at time of application;

(4) The total number of children at the time of application;

(5) The total number of children eligible to be counted in average daily attendance at the time of application;

(6) A description of the nature and scope of the education program currently being conducted for those children counted in paragraph (a)(5) of this section with funds other than those provided under this part, including types of instruction, number of children being served and number of staff employed in each major area or component, and source of funding.

(b) *Needs assessment.* With respect to the educational needs of all the children for whom the State agency is providing a free public education and who are eligible to be served, the application must include:

(1) A description of the procedures (including objective measures of educational achievement and special diagnostic tests available to the State agency) used to determine their special educational needs and to identify those with the most serious educational needs.

(2) An analysis of the results of those procedures, including the special educational needs identified and the number of eligible children exhibiting those needs;

(3) The additional procedures the State agency intends to employ to determine special educational needs and adapt Title I services to those needs; and

(4) A summary evaluation of the effectiveness of similar past projects funded by section 123 of Title I in accomplishing their objectives.

(c) *Project descriptions.* With respect to the proposed project, the application must include:

(1) A statement of the educational objectives of the proposed project and the related performance criteria;

(2) A description of each service to be provided as a means of accomplishing the project's objectives;

(3) The estimated number of children to be served by age and anticipated grade placement;

(4) A description of the type and number of staff to be employed, and of any inservice training (including the type of training, frequency, and number and type of staff members who will participate in that training);

(5) A budget based on categories of expenditure prescribed by the State educational agency with appropriate detail by service and by institution;

(6) A description of the use of Title I funds for construction or equipment in accordance with 34 CFR 200.81-82;

(7) A description of the procedures and instruments by which the effectiveness of the program will be evaluated, in accordance with 34 CFR 200.130; and

(8) A description of the procedure (in accordance with subsection (b) of the "Family Educational Rights and Privacy Act of 1974" and Part 99 of this title) for transmitting information about the nature and results of each child's participation in the Title I program to the next school or school system that provides for the child's education.

(20 U.S.C. 241c-3, 241e(a), 244(6)(B))

§ 203.13 Criteria for the approval of applications.

A State educational agency shall approve a project for which an application has been made only if it determines that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. This determination may be made only upon a finding that:

(a) [Reserved]

(b) The project set forth in the application is designed:

(1) To meet the special educational needs of the children to be served, among whom must be the children with the most serious educational needs, as identified in accordance with § 203.12(b); and

(2) To supplement the existing programs described in accordance with § 203.12(a)(6).

(c) The evaluation plans comply with 34 CFR 200.130 and are adequate for measuring the attainment of the objectives described in the application in accordance with § 203.12(c)(1);

(d) No funds other than those authorized by Title I of the Act are available to provide the services proposed in the application; and

(e) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of the institution, a school within the institution, the student body at large, or the needs of a specified grade within that school.

(20 U.S.C. 241c-3, 241e(a), 244(6)(B))

[43 FR 14292, Apr. 4, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PART 204—GRANTS TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Subpart A—General

Sec.
204.1 What is the Migrant Education Program?
204.2 What regulations apply to the Migrant Education Program?
204.3 What definitions apply to the Migrant Education Program?

Subpart B—How Does a State Apply for a Grant?

204.10 What documents must a State submit to receive a grant?
204.11 What condition must a State meet before submitting its annual program plan?
204.12 What provisions are required in a State's annual program plan?
204.13 When must a State's annual program plan be submitted?
204.14 How is a State's annual program plan reviewed?

Subpart C—How Is a Grant Made to a State?

Sec.
204.20 How is the amount available for a State grant determined?
204.21 How is a State entitlement determined?
204.22 How are excess funds reallocated?
204.23 Under what conditions may the Secretary make a special arrangement for services?
204.24 What are special discretionary projects for the coordination of migrant education activities?

Subpart D—How Does An Agency Apply to the State for a Subgrant?

204.30 What documents must an applicant submit to receive a subgrant?
204.31 [Reserved]
204.32 What provisions are required in an application for a subgrant?
204.33 How is an application for a subgrant developed?
204.34 How is an application for a subgrant reviewed?

Subpart E—How Is a Subgrant Made to an Applicant?

204.40 How is the amount of a subgrant determined?
204.41 What are the conditions under which a State may make a special arrangement for services?

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

204.50 What are the program's fiscal requirements?
204.51 How may funds be used?
204.52 [Reserved]
204.53 What is the requirement for coordination with other groups?
204.54 What is the requirement for coordination among projects and with other State programs?
204.55 What are the requirements for parental involvement?
204.56 How is the eligibility of a participating child documented?
204.57 What is the requirement for comparable access for migratory children?
204.58 Under what conditions may services be provided to preschool and formerly migratory children?
204.59 Under what conditions may supporting services be provided?

Subpart G—What Are the Administrative Responsibilities of the State?

204.60 The State is responsible for reviewing and approving applications.
Sec.
204.61 The State is responsible for monitoring and enforcement.
204.62 Under what conditions must the State withhold funds?
204.63 How must the State conduct and resolve audits?
204.64 How must the State resolve complaints?
204.65 How must the State evaluate the program?

Subpart H—What Compliance Procedures Are Used by the Department?

204.70 Under what conditions does the Secretary withhold funds?

Authority: Subpart 1, Part B of Title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 2761-63; 92 Stat. 2177-79), unless otherwise noted.

Source: 45 FR 22662, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 204.1 What is the Migrant Education Program?

(a) *General.* These regulations govern the Migrant Education Program authorized by Sections 141-143 of Title I of the Elementary and Secondary Education Act (the "Act"). The purposes of the program are to—

(1) Make Federal funds available to State educational agencies (SEAs) to establish or improve State migrant education programs designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers; and

(2) Enable these SEAs to coordinate their State migrant education programs and local projects with similar programs and projects in other States, including the transfer of school records and other information about eligible migratory children.

(b) *Eligibility to participate.* An SEA may apply for a grant to support a State migrant education program. The SEA may operate the program directly, through subgrants to local educational agencies (LEAs), or through special arrangements with public or nonprofit private agencies. Two or more SEAs may apply jointly for a grant to support a migrant education program that benefits eligible migratory children in those States.

(20 U.S.C. 2761, 2762)

§ 204.2 What regulations apply to the Migrant Education Program?

(a) *Regulations.* The following regulations apply to the Migrant Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and 34 CFR Part 77 (Definitions).

(2) The State Administration Regulations in 34 CFR Part 209 (State Administration and Duties)—when applicable.

(3) The Title I General Provisions Regulations in 34 CFR Part 200 (general title I provisions).

(4) The regulations in this Part 204.

(b) *How to use regulations.* The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist recipients in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 2761)

§ 204.3 What definitions apply to the Migrant Education Program?

(a) *Statutory definitions.* The following terms used in this part are defined in section 198 of title I of the Act:

Equipment
Parent

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77 (EDGAR Definitions):

Applicant
Application
Award
Contract
Grant
Local educational agency
Nonprofit
Preschool
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency
Subgrant

(c) *Definitions in the general title I provisions.* The following terms used in this part are defined in 34 CFR Part 200 (general title I provisions):

Applicant agency
Children

(d) *Program definitions.* The following additional definitions apply specifically to the Migrant Education Program:

(1) "Agricultural activity" means—

(i) Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(ii) Any activity directly related to the cultivation or harvesting of trees; or

(iii) Any activity directly related to fish farms.

(2) "Currently migratory child" means a child—

(i) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and

(ii) Who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity.

(3) "Fishing activity" means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

(4) (i) "Formerly migratory child" means a child who—

(A) Was eligible to be counted and served as a currently migratory child within the past five years, but is not now a currently migratory child;

(B) Lives in an area served by a migrant education project; and

(C) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

(ii) There is a total of six years of program eligibility—a one year status as a "currently migratory child" and up to five additional years as a "formerly migratory child."

(iii) For the purpose of this definition, "area served by a migrant education project" means any portion of the geographic area—

(A) That is within the legally prescribed boundaries of an LEA or a combination of LEAs; and

(B) Within whose boundaries there are currently or formerly migratory children who are receiving migrant education services or who will receive these services within the current grant period of the approved State migrant education program.

(5) "Guardian" means—

(i) A person who has been appointed to be the legal guardian of a child through formal proceedings in accordance with State law; or

(ii) A person who an SEA determines would be appointed to be the legal guardian of a child under the law of the child's domiciliary State if formal guardianship proceedings were undertaken; or

(iii) A person standing in the place of a parent to a child.

(6) "Migratory agricultural worker" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in an agricultural activity.

(7) "Migratory fisher" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in a fishing activity.

(8) "Operating agency" means—

(i) An LEA to which an SEA makes a subgrant of migrant education funds; or

(ii) A public or nonprofit private agency with which an SEA makes a special arrangement to carry out a migrant education project.

(20 U.S.C. 2761, 2762)

Subpart B—How Does a State Apply for a Grant?

§ 204.10 What documents must a State submit to receive a grant?

To receive a grant, an SEA shall submit to the Secretary the following:

(a) A State monitoring and enforcement plan at least once every three years. The provisions required in a State monitoring and enforcement plan are listed in 34 CFR Part 200 (general title I provisions).

(b) An annual program plan that is detailed enough to allow the Secretary to determine whether it satisfies the requirements of Title I of the Act and all regulations that apply.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2821; 20 U.S.C. 3141; 20 U.S.C. 1232d)

§ 204.11 What condition must a State meet before submitting its annual program plan?

An applicant SEA may not take into consideration payments of migrant education funds in determining the eligibility of an LEA for State aid or the amount of State aid to be allocated to that agency for the free public education of its children.

(20 U.S.C. 2824)

§ 204.12 What provisions are required in a State's annual program plan?

An applicant SEA shall provide in its annual program plan the following:

(a) All standard information requested on the form required by § 74.124 of 34 CFR Part 74 (Administration of Grants).

(b) A description of how the SEA will expend program funds during the fiscal year for which the annual program plan is submitted, and how the proposed State migrant education program complies with the Act and all regulations that apply. To enable the Secretary to evaluate the adequacy of a State's annual program plan, that description must include at least the following information:

(1) *Identification and recruitment.* An SEA shall describe in its plan its strategy for identifying and recruiting all eligible migratory children in the State.

(2) *Children to be served.* An SEA shall include in its plan a chart showing the estimated number of eligible migratory children expected to reside in the State during the program period and the number of these children to be served—other than with identification and recruitment services or the transfer of records—in the State program. The State shall organize the chart according to the following categories:

(i) Currently migratory school-aged children (elementary or secondary, agricultural or fisher, interstate or intrastate).

(ii) Formerly migratory school-aged children (elementary or secondary, agricultural or fisher).

(iii) Currently migratory preschool children (4 year olds or 3 year olds and under, agricultural or fisher, interstate or intrastate).

(iv) Formerly migratory preschool children (4 year olds or 3 year olds and under, agricultural or fisher).

The SEA shall also assure that it will serve all significant concentrations of currently migratory school-aged children in the State.

(3) *Needs assessment.* An SEA shall include in its plan a brief description of the educational needs of the children eligible to be served. That description must include needs with respect to reading, oral language, mathematics, career awareness, and speaking ability in English, and must demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of the children. That description must also include needs with respect to supporting services such as health, nutritional, and social services.

(4) *Evaluation.* An SEA shall include in its plan—

(i) The three most important objectives against which program success will be measured; and

(ii) A description of how the measurement will be conducted and how the results will be reported.

(5) *Instructional services.* An SEA shall include in its plan a brief description of—

(i) The types of services to be provided;

(ii) How it will emphasize individualized instruction in conducting its projects; and

(iii) How it will ensure that no migratory child is prevented from benefiting fully from the services provided because he or she does not speak English or has limited English language skills.

(6) *Parent advisory councils.* (i) An SEA shall include in its plan a description of how the required State and local parent advisory councils—

(A) Have participated in the planning of the State's program and its local projects; and

(B) Will be involved in reviewing the operation and evaluation of that approved State program and its local projects.

(ii) An SEA shall also include in its plan—

(A) A description of how the membership of parent advisory councils at the State and operating agency levels will be selected. If the SEA intends to use a method other than an election by parents of eligible migratory children (e.g., the use of volunteers, selection by program administrators, selection by program teachers), it shall explain why it is necessary to use that alternative method; and

(B) A description of the program's strategy for fostering equitable representation of parents of migratory children of different age groups (preschool, elementary, and secondary) and status groups (currently migratory and formerly migratory).

(7) *Parental involvement.* An SEA shall describe in its plan its strategy for involving parents, at the operating agency level, in the education of their children.

(8) *Interstate and intrastate coordination.* An SEA shall describe in its plan its efforts for ensuring continuity

in the education of migratory children through—

(i) Working cooperatively with other States that serve migratory children;

(ii) Requiring its operating agencies to cooperate with one another in the education of currently migratory intrastate children; and

(iii) Using fully the migrant student record transfer system including the transfer of the most current academic, health, enrollment, and withdrawal information available for the children served.

(9) *Use of operating agencies.* An SEA shall describe in its plan how it has given careful consideration to the most effective use of LEAs and other public or nonprofit private agencies in operating its projects. This determination does not preclude the possibility that only LEAs will serve as operating agencies.

(10) *Equipment and facilities.* An SEA shall describe in its plan how it will assure that operating agencies make full use of existing equipment and facilities before requesting program funds for those purposes.

(11) *Interagency coordination.* An SEA shall describe in its plan its efforts to coordinate its State migrant education program with programs and services of other public or private agencies, including those projects administered under Section 303 of the Comprehensive Employment and Training Act of 1973 and Title IV of the Economic Opportunity Act of 1964.

(12) *Monitoring and enforcement.* An SEA shall include in its plan a monitoring and enforcement plan (in the format prescribed by the Secretary) or an appropriate reference to a currently approved plan on file with the Secretary.

(13) *Administrative funds.* An SEA shall include in its plan a description of the administrative functions and staff salaries that it proposes to charge to State title I or title V administrative funds, whichever apply.

(14) *Training.* An SEA shall include in its plan a description of its strategy for the inservice training of staff members and the training of parent advisory council members. That description must include information with respect to the following:

(i) The needs and objectives for the training.

(ii) A timeline for the training activities.

(iii) The number and types of staff members, parents, and other persons who will be provided with the training.

(iv) The persons who will be responsible for providing the training.

(v) The estimated cost of the training activities.

(c) A request to use, during the fiscal year for which the annual program plan is submitted, any migrant education funds made available to the SEA for the preceding fiscal year, but not yet obligated.

(20 U.S.C. 2761, 2762)

[43 FR 14292, Apr. 4, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

§ 204.13 When must a State's annual program plan be submitted?

The Secretary publishes annually in the FEDERAL REGISTER an application notice with the deadline for the receipt of annual program plans.

(20 U.S.C. 2761, 2762; 20 U.S.C. 1232d)

§ 204.14 How is a State's annual program plan reviewed?

(a) *General criteria.* The Secretary reviews an SEA's annual program plan and approves it only if the proposed State migrant education program—

(1) Is designed to meet the special educational needs of migratory children eligible to be served; and

(2) Holds reasonable promise of making substantial progress toward meeting those needs.

(b) *Review.* (1) To enable the Secretary to evaluate the promise of a State annual program plan, that plan must comply with the informational and content requirements prescribed in § 204.12 of these regulations. If the Secretary determines that the criteria for the approval of a State annual program plan have not been satisfied, the Secretary notifies the SEA and provides it with comments.

(2) The SEA shall revise those parts of its annual program plan that need improvement.

(3) The Secretary reviews the revised parts of the annual program plan to determine if the criteria for approval have been satisfied.

(20 U.S.C. 2761, 2762)

Subpart C—How Is a Grant Made to a State?

§ 204.20 How is the amount available for a State grant determined?

(a) *General.* (1) The Secretary determines for each fiscal year the amount of the migrant education grant for which the SEA in each State (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) may apply according to sections 141(b), 156, and 157 of title I of the Act.

(2) The Secretary determines these amounts on the basis of the number of eligible migratory children in each State as shown by the migrant student record transfer system or any other system the Secretary believes most accurately reflects the actual number of eligible migratory children.

(b) *Special summer formula.* The Secretary adjusts the number of eligible migratory children determined under paragraph (a)(2) of this section to reflect the special needs of migratory children for summer projects and the additional costs of operating these projects. The adjustment factor that the Secretary uses—

(1) Is based on the best available information about the costs of operating summer projects and the number of children participating in these projects;

(2) Is announced annually in the FEDERAL REGISTER; and

(3) May be redetermined at any time.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2791; 20 U.S.C. 2792)

§ 204.21 How is a State entitlement determined?

(a) *Estimated cost of a State migrant education program.* An applicant SEA is entitled to receive a migrant education grant in the amount the Secretary determines necessary to carry out the activities in its annual program plan. This amount may not exceed the total amount available to that SEA as determined by the Secretary under §§ 204.20 and 204.22 of these regulations.

(b) *Informational basis for determination of a State entitlement.* (1) The Secretary determines the amount of the migrant education grant that an SEA is entitled to receive on the basis of information available at the time that the annual program plan is approved. This information includes the number of children to be served and the nature and scope of the State migrant education program.

(2) The Secretary may adjust this amount later in the fiscal year on the basis of additional information available at that time.

(c) *Consideration of the costs of past and future activities and the amount of funds available.* In determining the amount of the migrant education grant to which an SEA is entitled, the Secretary considers the following information:

(1) The amount for which the SEA may apply, as determined under § 204.20.

(2) The cost of completed program activities under previous grants and the number of children who were served.

(3) The estimated cost of activities not yet begun under the preceding grant and the number of children who will be served.

(4) In the case of a request for an increase in the grant that the Secretary previously determined necessary to carry out the activities in the approved annual program plan, the estimated cost of providing additional program services before the end of the grant period and the number of children who would receive additional services.

(5) The unused amount of the SEA's preceding migrant education grant.

(6) Any other relevant information.

(20 U.S.C. 2761, 2762)

§ 204.22 How are excess funds reallocated?

(a) *General.* If the Secretary determines that the amount for which an SEA may apply, as determined under § 204.20, is more than the amount needed to carry out the activities in its annual program plan, the Secretary may allocate some or all of this excess to one or more other SEAs whose amounts available under § 204.20 would otherwise be insufficient to serve the eligible migratory children in those States.

(b) *Determination of excess funds.* Circumstances in which the Secretary may determine that an SEA has excess funds include the following:

(1) When the SEA determines from its own information that the amount available to it exceeds the amount it needs to carry out the activities in its annual program plan and notifies the Secretary of the excess funds.

(2) When for the preceding two fiscal years, the SEA has carried over from one year to the next more than 15 percent of its migrant education grant.

(3) When the Secretary obtains—later in the fiscal year—information that supports a redetermination of the SEA's entitlement.

(c) *Notification to the State.* (1) *Notification.* The Secretary notifies an SEA if part of the amount available to it is being considered for reallocation.

(2) *State's opportunity to explain.* (i) The SEA may make a request to the Secretary for an opportunity to explain why a reallocation is not warranted.

(ii) This request must be submitted within 15 days of the SEA's receipt of the Secretary's notification of possible reallocation.

(3) *Reallocation decision.* If the SEA does not request an opportunity to explain, or if—after the explanation—the Secretary determines that the total amount available to the SEA for that fiscal year exceeds the amount needed, the Secretary may reallocate part of that total amount.

(20 U.S.C. 2761, 2762)

§ 204.23 Under what conditions may the Secretary make a special arrangement for services?

(a) *General.* Through a grant or contract, the Secretary may make a special arrangement with a public or nonprofit private agency to carry out the purposes of the Migrant Education Program if the Secretary determines that—

(1) An SEA is unwilling or unable to conduct an educational program for the migratory children who are eligible to be served;

(2) The arrangement would result in more efficient and economic administration of the program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Basis for determination.* The Secretary may determine that an SEA is unwilling or unable to conduct an educational program for the migratory children who are eligible to be served if—

(1) The SEA fails to submit an annual program plan by the date established in the FEDERAL REGISTER; or

(2) The SEA fails to submit, after receiving any necessary technical assistance from the Secretary, an annual program plan that satisfies the criteria for approval.

(c) *Availability of funds.* The Secretary may use all or part of the total amount of the migrant education grant available to the affected State—under § 204.20 of these regulations—to make one or more special arrangements.

(d) *Notice to the State.* The Secretary does not make a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(20 U.S.C. 2761; 20 U.S.C. 2832)

§ 204.24 What are special discretionary projects for the coordination of migrant education activities?

(a) *General.* In accordance with section 143 of Title I of the Act, the Secretary may, in full consultation with the States, make grants or contracts with an SEA or SEAs to—

(1) Operate a system for the transfer of school records and other information about migratory children; or

(2) Carry out other activities designed to improve the interstate and intrastate coordination of migrant education projects; or

(3) Both (1) and (2).

(b) *Types of projects.* The special coordination projects authorized by section 143 of title I of the Act and paragraph (a) of this section may include, but are not limited to, activities such as the following:

(1) *Transfer of school records.* This type of project would provide for the administration of a system for the transfer of school records and other information about migratory children. The purpose of the system would be to facilitate coordination of projects among school districts and among States and to enhance the continuity of education for migratory children.

(2) *Parental Involvement.* This type of project might include activities such as—

(i) Designing and establishing interstate (i.e., regional) parent advisory councils;

(ii) Conducting research and development activities with respect to effective designs of parental involvement and the training of parent advisory council members; and

(iii) Providing technical assistance to SEAs and LEAs in working with and training parent advisory council members.

(3) *Resource centers.* This type of project might include activities such as—

(i) Evaluating the effectiveness and applicability of materials (such as instruments and procedures for needs assessment surveys, student assessment instruments, curricular materials, and evaluation methods and materials) developed for the Migrant Education Program;

(ii) Disseminating the most appropriate of these materials; and

(iii) Disseminating information about the availability of experts and other resources in the field of migrant education.

(4) *Identification and recruitment of children.* This type of project might include activities such as—

(i) Evaluating State identification and recruitment strategies;

(ii) Developing a coordinated national program for the identification and recruitment of migratory children, including the design of model strategies and instruments; and

(iii) Providing technical assistance to SEAs in the design and implementation of effective child identification and recruitment strategies.

(5) *Secondary school services.* This type of project might include activities such as—

(i) Assessing the needs of secondary school-level migratory children and the degree to which these needs are currently being met;

(ii) Evaluating project designs and materials from Migrant Education Program secondary school projects, such as career education, vocational instruction, and dropout prevention projects, and the transfer of secondary school credits; and

(iii) Providing technical assistance to SEAs and LEAs in the design and implementation of secondary school projects for migratory children.

(6) *Information and dissemination center.* This type of project might include acitivities such as—

(i) Conducting a national awareness project for the Migrant Education Program—directed to the parents of eligible children, other parents and adults, the general education and educational research communities, and other family and child service agencies; and

(ii) Developing and disseminating national Migrant Education Program information materials.

(7) *Staff development services.* This type of project might include activities such as designing, developing, and implementing interstate training strategies for Migrant Education Program staff members.

(c) *Project awards.* Awards to an SEA or SEAs under section 143 of title I of the Act may be made by grant or contract.

(d) *Source of funds.* The Secretary, in accordance with section 143 of title I of the Act and these regulations, reserves funds for the purposes described in paragraph (a) of this section.

(e) *Consultation with SEAs.* The Secretary consults fully with the SEAs participating in the Migrant Education Program with respect to the types of projects to be conducted, the priority of funding for these projects, the evaluation of existing projects, and the continuation, expansion, or termination of existing projects.

(20 U.S.C. 2763)

Subpart D—How Does an Agency Apply to the State for a Subgrant?

§ 204.30 What documents must an applicant submit to receive a subgrant?

To receive a subgrant, an LEA shall submit to the SEA a project application—for a period of not more than three years—that is detailed enough to allow the SEA to determine if the proposed project satisfies the requirements of title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan.

(20 U.S.C. 2761, 2762; 20 U.S.C. 3142; 20 U.S.C. 1232e)

§ 204.31 [Reserved]

§ 204.32 What provisions are required in an application for a subgrant?

An SEA shall require each LEA that desires to participate in the State migrant education program to submit to it the application required by § 204.30 of these regulations. In its application the LEA shall include the following:

(a) A description of the project to be carried out by the LEA.

(b) An explanation of the relationship between the project and the State annual program plan.

(c) The objectives to be achieved for each grade group.

(d) (1) The estimated number of eligible migratory children living in the area to be served by the project, and the estimated number of these children who will be served.

(2) If the LEA proposes to provide migrant education program services—other than the identification and recruitment of children and the transfer of records—to fewer eligible migratory children than the number of these eligible children living in the area, it shall explain why.

(e) A description of each service to be provided and its estimated cost.

(f) The types and number of staff to be employed.

(g) A description of how the LEA will comply with § 204.55 of these regulations concerning parental involvement, including how the members of its parent advisory council will be selected.

(h) A description of how the LEA will coordinate with other agencies—in accordance with section 124(f)(1) of title I of the Act.

(i) A description of how the LEA ensures that no eligible migratory child will be prevented from benefiting fully from the project's services because he or she does not speak English or has limited English-language skills.

(j) Any other relevant information required by the SEA.

(20 U.S.C. 2761, 2762)

§ 204.33 How is an application for a subgrant developed?

An LEA that applies for a subgrant shall prepare and submit to the SEA its application as follows:

(a) In the form required by the SEA.

(b) According to sections 124 (i) and (j) of Title I of the Act, section 502(b)(5) of title V of the Act, and section 436(b)(5) of the General Education Provisions Act that require the participation of parents, teachers, and local school boards in the planning of projects.

(c) According to any other instructions provided by the SEA.

(20 U.S.C. 2734; 20 U.S.C. 2761, 2762; 20 U.S.C. 3142; 20 U.S.C. 1232e)

§ 204.34 How is an application for a subgrant reviewed?

An SEA shall approve the application of an LEA only if it—

(a) Complies with the requirements of Title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan; and

(b) Satisfies all other relevant requirements and criteria of approval that the SEA specifies.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2811)

Subpart E—How Is a Subgrant Made to an Applicant?

§ 204.40 How is the amount of a subgrant determined?

An SEA shall determine the amount of a subgrant to an LEA based on the following criteria:

(a) The number of children to be served.

(b) The nature and scope of the proposed project.

(c) Any other criteria developed by the SEA relevant to matters of the State migrant education program, including its priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(20 U.S.C. 2761, 2762)

§ 204.41 What are the conditions under which a State may make a special arrangement for services?

(a) *General.* An SEA may make a special arrangement with a public or nonprofit private agency or agencies to carry out a project if the SEA determines that—

(1) An LEA is unable or unwilling to conduct a project;

(2) The arrangement would result in more efficient and economic administration of the State migrant education program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Basis for determination.* (1) An SEA may determine that an LEA is unwilling or unable to conduct a project for the migratory children who are eligible to be served if—

(i) The LEA fails to submit an application by the date established by the SEA; or

(ii) The LEA fails to submit, after receiving any needed technical assistance from the SEA, an application that satisfies the criteria for approval established by the SEA.

(2) The SEA shall—for each area of the State with a significant concentration of eligible currently migratory school-aged children—either provide services directly, through a subgrant with an LEA, or through a special arrangment with a public or nonprofit private agency.

(c) *Requirements for a special arrangement.* If an SEA makes a special arrangement for services through a public or nonprofit private agency, the SEA shall require that operating agency to apply for funds and administer its project in a manner consistent with the provisions relating to LEAs as subgrantees, as prescribed in Subparts D, E, and F of these regulations.

(20 U.S.C. 2761, 2762)

[45 FR 22662, Apr. 3, 1980; 45 FR 48144, July 18, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 204.50 What are the program's fiscal requirements?

(a) *General.* An SEA and its operating agencies shall comply with the requirements of title I of the Act and 34 CFR Part 200 (general title I provisions) relating to the—

(1) Maintenance of fiscal effort;

(2) Restriction limiting the use of program funds to the excess cost of projects;

(3) Requirements that program funds supplement and not supplant non-Federal funds (except for those requirements implementing section 126(d) of Title I of the Act);

(4) Public control of funds; and

(5) Use of program funds for staffing, parent council activities, training, planning grants, and cooperative projects.

(b) *State control of funds*—(1) *Adjustment of subgrants.* To promote the efficient administration of the State migrant education program, the SEA shall issue a rule that permits the SEA to make appropriate adjustments to its subgrants and special arrangements to avoid paying funds to an operating agency in excess of that agency's actual needs.

(2) *Adjustment procedures.* (i) These adjustments shall be based on periodic reports of the operating agency's actual expenditures.

(ii) Following an adjustment, the SEA may increase the funding of one or more other operating agencies that demonstrate a need for additional funds.

(iii) An operating agency affected by an adjustment shall amend its project application to reflect that adjustment and shall note the adjustment in its final financial report.

(c) *Title and control of property*—(1) *State control.* Except as provided by paragraph (c)(2) of this section, and notwithstanding the requirements of 34 CFR Part 200 (general Title I provisions), an SEA shall maintain title to and control over all property that is acquired with its migrant education funds.

(2) *Special requirements.* (i) If a State law requires that an agency of the State other than the SEA maintain title to, or control over, property that is acquired with migrant education funds, the SEA shall arrange for those functions to be carried out by the appropriate agency. That State agency shall then be responsible for the exercise of those functions.

(ii) However, the SEA shall retain the right to use, move, or otherwise dispose of this property in a manner designed to carry out most effectively the State migrant education program.

(d) *Source of funds for State administration*—(1) *State administrative funds.* To administer its Title I program for migratory children, the SEA shall use funds provided under section 194 of title I of the Act or section 510 of Title V of the Act, whichever applies. It shall use these funds of perform those functions that are the same or similar to the administrative functions carried out by the SEA in connection with projects under 34 CFR Parts 201 (LEA projects in low-income areas), 302 (State agency projects for handicapped children), and 203 (State agency projects for neglected or delinquent children). These functions include the—

(i) Preparation of the SEA's monitoring and enforcement plan and annual program plan to be submitted to the Secretary;

(ii) Design, publication, and distribution to operating agencies of the application, evaluation, performance, and financial report forms, and the appropriate instructions;

(iii) Provision of technical assistance to operating agencies in developing their applications;

(iv) Review of applications and reports from operating agencies;

(v) Monitoring of projects for compliance with the State migrant education program;

(vi) Design, publication, and final preparation of the evaluation, performance, and financial reports that the SEA submits to the Secretary;

(vii) Maintenance of fiscal control and accounting procedures;

(viii) Dissemination of information; and

(ix) Coordination of the State migrant education program—and facilitation of the coordination of local projects—with other public and private agencies.

(2) *Program funds.* To administer its Title I program for migratory children, an SEA may use Title I funds made available for State migrant education programs under section 141 of title I of the Act only to perform those functions that are unique to the Migrant Education Program or that are the same or similar to the functions performed by LEAs in the State under 34 CFR Part 201. These functions include the—

(i) State-wide identification and recruitment of eligible migratory children;

(ii) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(iii) Coordination of project level activities with other public and private agencies;

(iv) Implementation of the migrant student record transfer system;

(v) Processing of reports that are submitted by the operating agencies to the SEA;

(vi) Maintenance of inventories of property acquired with migrant education funds;

(vii) Negotiation and awarding of contracts; and

(viii) Evaluation activities of the State migrant education program other than the design of evaluation report forms and the final preparation of the SEA's evaluation report to the Secretary.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2844; 20 U.S.C. 3150)

§ 204.51 How may funds be used?

(a) *General.* An SEA may use funds made available for the State migrant education program under section 141 of Title I of the Act only for the following:

(1) To perform the functions described in § 204.50(d)(2) of these regulations relating to administrative functions that are unique to the State migrant education program.

(2) To support approved projects designed to meet the special educational needs of eligible migratory children.

(b) *Types of services.* The projects referred to in paragraph (a)(2) of this section must be designed to meet the special educational needs of the migratory children eligible to be served, particularly any need for improvement in the basic academic subjects. The project's services must be supplementary to those services provided with State and local funds. These projects may include the following types of services:

(1) Academic instruction.

(2) Remedial and compensatory instruction.

(3) Bilingual and multicultural instruction.

(4) Vocational instruction and career education services.

(5) Special guidance, counseling, and testing services.

(6) Preschool services.

(7) Other educational services that are not available to eligible migratory children in adequate quantity or quality.

(8) The acquisition of instructional materials—such as books and other printed or audiovisual materials—and equipment.

(9) Other services that meet the purposes of the Migrant Education Program.

(20 U.S.C. 2761, 2762)

§ 204.52 [Reserved]

§ 204.53 What is the requirement for coordination with other groups?

An SEA shall plan and operate the activities in its annual program plan in coordination with—

(a) Migrant and seasonal farmworker projects administered under Section 303 of the Comprehensive Employment and Training Act of 1973;

(b) Migrant and seasonal farmworker projects administered under Title IV of the Economic Opportunity Act of 1964; and

(c) Projects of any other group or agency that provides benefits or services to migrants.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2734)

§ 204.54 What is the requirement for coordination among projects and with other State programs?

An SEA shall develop and implement a plan to promote continuity in the education of eligible migratory children. The SEA shall include in this plan appropriate procedures for—

(a) Coordinating projects within the State. This may include the interdistrict transfer of course credits and the intrastate sharing of project planning, evaluation, curricular, and staff training materials;

(b) Coordinating the State migrant education program with similar programs in other States. This may include the interstate transfer of course credits and the interstate sharing of program planning, evaluation, curricular, and staff training materials; and

(c) Using fully the migrant student record transfer system, including the transfer—in an appropriate manner according to instructions of the Secretary—of the most current academic, health, enrollment, and withdrawal information available for the children served.

(20 U.S.C. 2761, 2762)

§ 204.55 What are the requirements for parental involvement?

(a) *General.* An SEA shall take the necessary steps to assure effective parental involvement throughout the State migrant education program.

(b) *Requirements for an operating agency advisory council.* An SEA shall require each operating agency to—

(1) Solicit actively parental involvement in the planning, operation, and evaluation of its project; and

(2) Establish and consult a parent advisory council.

(c) *Requirements for the State advisory council.* An SEA shall—

(1) Solicit actively parental involvement in the planning, operation, and evaluation of its State migrant education program; and

(2) Establish and consult a parent advisory council.

(d) *General council requirements.* (1) Each State and operating agency parent advisory council must be composed of people who know the needs of migratory children.

(2) To the extent possible (considering factors such as the duration of the project or the continuing availability of council members), the membership of each council must be elected by parents of eligible migratory children.

(3) A majority of the members of each council must be parents of children who are being served or who are eligible to be served.

(4) An SEA and each operating agency shall give its parent advisory council the responsibility for advising it with respect to the planning, implementation, and evaluation of the State program or the local project, whichever applies.

(5) An SEA and each operating agency shall provide, without charge, to its parent advisory council and, upon request, to each member of its parent advisory council, a copy of the title I migrant education statute and any applicable Federal or State regulations or guidelines.

(6) An SEA and each operating agency shall provide, without charge, to its parent advisory council any report resulting from Federal or State auditing, monitoring, or evaluation of the State program or the local project, whichever applies.

(7) An SEA and, to the extent possible, each operating agency shall provide a program for training the members of its advisory council to carry out their responsibilities. The training program—

(i) Must be planned in full consultation with members of the parent advisory council;

(ii) Must provide each member of the advisory council with appropriate training materials; and

(iii) May be supported by migrant education funds, including the expenses associated with the attendance of members at training sessions.

(8) An operating agency that provides services on a State-wide basis need not create its own advisory council. However, that agency shall consult the State parent advisory council required by paragraph (c) of this section.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2735)

§ 204.56 How is the eligibility of a participating child documented?

(a) *Basic requirement.* An SEA or an operating agency may not count a child under § 204.20 or provide program services to that child until the agency has—

(1) Determined that the child is either a currently or formerly migratory child as defined under § 204.3(d); and

(2) Made a written record of the basis on which the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA or an operating agency may rely on credible information from any source, including that provided by the child or his or her parent or guardian.

(2) An SEA or an operating agency is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his or her parent or guardian.

(20 U.S.C. 2761, 2762)

§ 204.57 What is the requirement for comparable access for migratory children?

(a) *Basic requirement.* In order to participate in the State migrant education program, an LEA shall provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to non-migratory children living in the attendance area in which migratory children are being served.

(b) *Relation to other requirements.* The provisions of paragraph (a) of this section do not modify—

(1) The requirements of 34 CFR Part 200 (general title I provisions) relating to supplanting State and local funds and services that the applicant is required by law to provide to all children or specifically to migratory children; or

(2) The requirement in 34 CFR Part 201 relating to the maintenance of comparability in school attendance areas conducting projects that are funded under 34 CFR Part 201 and that serve migratory children.

(c) *Definition of comparable access.* The requirements of paragraph (a) of this section, are satisfied only if an LEA gives migratory children access to all State or locally funded instructional, health, nutritional, transportation, and other services on the same basis as the LEA provides to non-migratory children residing in the attendance area where migratory children are being served.

(20 U.S.C. 2761, 2762)

§ 204.58 Under what conditions may services be provided to preschool and formerly migratory children?

(a) *Preschool migratory children.* (1) An SEA may support a project that provides instructional or supporting services to preschool migratory children if the participation of these children does not—

(i) Prevent the participation of school-aged migratory children; or

(ii) Dilute the effectiveness of the State migrant education program for these school-aged children.

(2) An instructional project that is designed to meet the special educational needs of preschool migratory children is a project that is—

(i) Comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills;

(ii) Limited to children who are under the age at which public elementary education is provided under State law; and

(iii) Conducted by or under the direct supervision of a person who is qualified under State law to conduct the activities referred to in paragraph (a)(2)(i) of this section.

(b) *Formerly migratory children.* (1) An SEA may support a project that provides instructional or supporting services to formerly migratory children if the participation of those children does not—

(i) Prevent the participation of currently migratory children of the same age group (i.e., preschool or school-aged); or

(ii) Dilute the effectiveness of the State migrant education program for those currently migratory children.

(2) A formerly migratory child may participate in a project that—

(i) Also includes currently migratory children; or

(ii) Includes only formerly migratory children.

(c) *Service priorities.* An SEA and its operating agencies shall serve eligible migratory children—according to their needs—in the following order:

(1) School-aged currently migratory children.

(2) School-aged formerly migratory children.

(3) Preschool currently migratory children.

(4) Preschool formerly migratory children.

However, if in order to provide Title I instructional services to school-aged currently migratory children, it would be necessary to provide day care or similar services to preschool-aged currently migratory children, and no other funds—other than Title I funds—are available for that purpose, an SEA or an operating agency may provide Title I instructional services instead of day care services to those preschool children as if those children had a priority higher than school-aged formerly migratory children.

(20 U.S.C. 2761, 2762)

§ 204.59 Under what conditions may supporting services be provided?

(a) *General.* An SEA or an operating agency may provide health, nutritional, social, or other supporting services with migrant education funds if—

(1) These services are necessary to enable eligible migratory children to

participate effectively in instructional services; and

(2) In the case of an operating agency, that agency has first—

(i) Requested assistance from the SEA in locating and using other Federal and State programs to provide these services; and

(ii) Determined that funds or services from other programs are not available or are inadequate to meet the needs of the participating migratory children.

(b) *Day care services*—(1) *Condition for approval.* An SEA or an operating agency may provide day care services for eligible migratory children only as a supporting service to eligible preschool or school-aged migratory children and only with the specific approval of the Secretary.

(2) *Request to the Secretary.* An SEA that desires to use program funds for day care services shall include a request in its annual program plan and shall provide adequate information to allow the Secretary to determine that the proposed day care services are—

(i) Not available from any other source;

(ii) Necessary to enable eligible preschool or school-aged migratory children to receive instructional services supported under Title I; and

(iii) Not extravagant in relation to—

(A) The costs;

(B) The number of children who will receive day care services; and

(C) The effect that the availability of these services will have on the participation of eligible migratory children in instructional services supported by title I funds.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2734)

Subpart G—What Are the Administrative Responsibilities of the State?

§ 204.60 The State is responsible for reviewing and approving applications.

(a) *State review and approval.* An SEA shall review all applications from operating agencies and may approve only those that—

(1) Satisfy the criteria established by the SEA; and

(2) Comply with the requirements of title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan.

(b) *Copy to the Secretary.* If the Secretary requests a copy of an approved application, including any amendment, the SEA shall send that copy within 10 days of the request.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2811)

§ 204.61 The State is responsible for monitoring and enforcement.

[See the Title I General Provisions Regulations (34 CFR Part 200).]

§ 204.62 Under what conditions must the State withhold funds?

[See the Title I General Provisions Regulations (34 CFR Part 200).]

§ 204.63 How must the State conduct and resolve audits?

[See the Title I General Provisions Regulations (34 CFR Part 200).]

§ 204.64 How must the State resolve complaints?

(a) *General.* An SEA shall develop and implement procedures—for resolving complaints—that comply with all of the requirements prescribed by 34 CFR Part 200 (general Title I provisions).

(b) *Special procedure.* An SEA shall establish an appropriate accelerated procedure for resolving complaints regarding short-term migrant education projects—such as those that operate for fewer than 90 days.

(c) *Secretary's review.* The Secretary may review an SEA's resolution of a complaint. The procedures governing the Secretary's review of an SEA's resolution of a complaint were published in the FEDERAL REGISTER on October 23, 1979 (44 FR 61109). After the review, the Secretary may, when appropriate—

(1) Issue an order to the SEA prescribing additional actions to be taken by that agency; or

(2) Implement a special arrangement as stated under § 204.23.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2815; 20 U.S.C. 3147)

[45 FR 22662, Apr. 3, 1980; 45 FR 48144, July 18, 1980]

§ 204.65 How must the State evaluate the program?

(a) *General.* An SEA shall submit to the Secretary an annual report evaluating the effectiveness of its Statewide migrant education program.

(b) *Sampling.* To minimize the reporting burden on projects, the SEA may select each year a representative sample of projects, schools, and children to participate in the State-wide evaluation. The selection of this sample must be done in accordance with any criteria published by the Secretary.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2822; 20 U.S.C. 3141; 20 U.S.C. 1232d)

Subpart H—What Compliance Procedures Are Used by the Department?

§ 204.70 Under what conditions does the Secretary withhold funds?

If the Secretary determines that an SEA has failed substantially to comply with the requirements of the Act, any regulations that apply, or the provisions of the approved State annual program plan, the Secretary—

(a) Shall withhold Title I migrant education funds from that SEA in accordance with section 186 of Title I of the Act and Section 435 of the General Education Provisions Act; or

(b) May enter into a compliance agreement with the SEA in accordance with section 186 of Title I of the Act; or

(c) May issue a cease and desist order to the SEA in accordance with Section 454 of the General Education Provisions Act.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2836; 20 U.S.C. 1234b, 1234c)

PART 208—STRENGTHENING STATE EDUCATIONAL AGENCY MANAGEMENT

Subpart A—General

Sec.
208.1 Strengthening State educational agency management.
208.2 Eligible parties.
208.3 Regulations that apply to this program.
208.4 Definitions.

Subpart B—How a State Applies for a Grant

208.10 State plan.
208.11 Conditions the State must meet before submitting a plan—maintenance of effort.

Subpart C—How the Secretary Makes a Grant to a State

208.20 Grants to State educational agencies.
208.21 Evaluation of application for discretionary grant.
208.22 Criteria for assistance.

Subpart D—Conditions That the State Must Meet

208.31 Providing resources for other agencies of State government.
208.32 Carry-over funds.
208.33 Evaluation by the State educational agency.

Subpart E—Compliance Procedures Used by the Department

208.40 Waiver of maintenance of effort.
208.41 Procedures for waiver of maintenance of effort.
208.42 Effect of waiver of maintenance of effort.

AUTHORITY: Title V, Part B, Elementary and Secondary Education Act of 1965, as amended. 92 Stat. 2248-2249, unless otherwise noted.

(20 U.S.C. 3161-3164)

SOURCE: 45 FR 22683, Apr. 3, 1980 unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 208.1 Strengthening State educational agency management.

This program provides Federal financial assistance to strengthen the educational leadership resources of

State educational agencies (SEAs) and to assist SEAs in identifying and meeting the critical educational needs of the States.

(20 U.S.C. 3161)

§ 208.2 Eligible parties.

(a) All SEAs are eligible for support under this program.

(b) With the concurrence of all the SEAs involved, one SEA may apply for a grant on behalf of itself and other SEAs.

(20 U.S.C. 3161)

§ 208.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The general regulations of the Department of Education on Administration of Grants in Part 74.

(b) The Education Department General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Programs) for projects funded with discretionary grants, or Part 76 (State-Administered Programs) for all other grants.

(c) The regulations in this part.

(20 U.S.C 3161-3164)

§ 208.4 Definitions.

(a) As used in this part—

"Act" means the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 89-10).

(20 U.S.C. 821)

"Preceding fiscal year" means the twelve-month fiscal period most commonly used in the State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

"Second preceding fiscal year" means the second twelve-month fiscal period most commonly used in the State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

(20 U.S.C. 3084(a)(7))

"Title V-B" means part B of title V of the Act.

(20 U.S.C. 3161-3164)

(b) The following terms used in this part are defined in the Act—

Local educational agency (LEA).
State.
State educational agency.

(20 U.S.C. 881)

[45 FR 22683, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

Subpart B—How a State Applies for a Grant

§ 208.10 State plan.

(a) An SEA shall describe in its State plan the activities planned for the purpose of strengthening the SEA under title V-B. This description shall include—

(1) The purposes for which the SEA plans to spend title V-B funds;

(2) The activities or groups of related activities the SEA plans to undertake to achieve these purposes;

(3) The ways in which these activities or groups of related activities will (i) strengthen the educational leadership resources of the SEA, or (ii) assist the SEA in identifying and meeting the critical educational needs of the State; and

(4) The estimated annual cost for each program year covered by the State plan for each activity or group of related activities.

(b) An SEA shall describe in its State plan how it will make available information and technical assistance to appropriate private school officials who desire to arrange for children in those schools to participate in Federal elementary and secondary education programs. The following steps are required:

(1) The SEA shall make available to appropriate private school officials the same publications and materials relating to those programs that the SEA provides to LEAs.

(2) The SEA shall invite appropriate officials of private schools to SEA-sponsored or conducted meetings of groups of LEAs at which those programs are to be discussed.

(3) An LEA that receives individual technical assistance from the SEA in planning projects shall invite appro-

priate officials of all interested private schools in its district to those technical assistance sessions that deal with those programs.

(4) An SEA shall make available appropriate technical assistance to appropriate officials of private schools upon the request of those officials. The SEA shall invite the LEAs in whose districts those private schools are located to these technical assistance sessions.

(5) An SEA is not required to make information and technical assistance available to officials of private schools that have indicated to the SEA that they do not desire to have their children participate in Federal educational programs.

(c) (1) An SEA shall describe in its State plan a comprehensive plan for the coordination of Federal and State funds for training educational personnel. This comprehensive plan need not have been developed solely for the purpose of complying with the requirements of either section 404(a)(12) (comprehensive plan for training) or section 522(2) (comprehensive plan for training) of the Act. An SEA may use its funds under title V-B or its administrative funds under section 404(a)(8) (administration of the title IV State plan) of the Act to develop its comprehensive plan if the development is an identified activity in the appropriate State plan.

(2) The Secretary accepts a comprehensive plan that was developed prior to the effective date of the title V-B State plan so long as the comprehensive plan meets the requirements of section 404(a)(12) or section 522(2) of the Act.

(3) The Secretary accepts a description of the planning that a State is undertaking to meet the specific requirements of section 404(a)(12) or section 522(2) of the Act if the SEA submits the comprehensive plan in final form as an amendment to the appropriate State plan by June 30, 1980.

(4) The comprehensive plan shall be developed with the involvement of teachers, professional associations, institutions of higher education, and other interested individuals and organizations including other affected public agencies.

(d) (1) The SEA shall submit its title V-B State plan in accordance with the instructions and schedules of the Secretary.

(2) The SEA need not submit a State plan more often than once every three years.

(e) The SEA may submit amendments to its title V-B State plan so long as they conform to the requirements for amendments in 34 CFR Parts 75 or 76 of this title, whichever is applicable.

(20 U.S.C. 3162 and 3084 (a)(12))

[45 FR 22683, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980; 46 FR 10154, Feb. 2, 1981]

§ 208.11 Conditions the State must meet before submitting a plan—maintenance of effort.

(a) To receive title V-B funds, a State shall have expended for programs described in section 521 (authorized activities for strengthening SEA management) of the Act during the preceding fiscal year an amount of non-Federal funds at least equal to the amount of non-Federal funds it expended for those purposes during the second preceding fiscal year.

(b) (1) If non-Federal expenditures for programs described in section 521 of the Act depend on a State appropriation that is not an annual appropriation, the State may average its expenditures over the number of fiscal years for which the appropriation was made.

(2) A State that chooses to average its expenditures in this way shall continue to use this method for computing maintenance of effort for each fiscal year for which the State appropriation was made.

(3) A State that does not average its expenditures shall attribute all expenditures to the fiscal year in which they were incurred.

(c) (1) The SEA shall collect and maintain data that verify the State's compliance with this section and with section 431A (maintenance of effort determination) of the General Education Provisions Act (GEPA).

(2) The State shall make these data available to the Secretary on request.

(20 U.S.C. 3084 and 1232-1)

Subpart C—How the Secretary Makes a Grant to a State

§ 208.20 Grants to State educational agencies.

(a) The Secretary makes grants to applicant SEAs on the basis of the allotments described in section 404(a)(9) (annual funding for title V-B) or section 524(a) (allotments to States) of the Act.

(b) If funds are available to the Secretary for discretionary grants under section 524(b) (discretionary grants to States) of the Act, each SEA is entitled to compete for grant awards from those funds.

(c) (1) To apply for a discretionary grant, an SEA shall submit an amendment to its title V-B State plan in accordance with instructions and schedules of the Secretary.

(2) An SEA, in its State plan amendment, shall take into account the funding criteria in § 208.22 of this part.

(20 U.S.C. 3164 and 3084(a)(9))

§ 208.21 Evaluation of application for discretionary grant.

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in § 208.22.

(b) The Secretary awards up to one hundred possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion. The value assigned to each criterion indicates the relative importance the Secretary places on that criterion.

(20 U.S.C. 1221e-3(a)(1))

§ 208.22 Criteria for assistance.

The Secretary reviews each application for information about each of the following criteria:

(a) Information that shows the quality of the plan of operation for the project—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. (10 points)

(b) (1) Information that shows the quality of the key personnel the applicant plans to use on the project—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(2) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides. (8 points)

(c) Information that shows that the project has an adequate budget and is cost effective—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) Information that shows the quality of the evaluation for the project—methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (See also § 208.33 Evaluation by the State educational agency) (8 points)

(e) Information that shows that the applicant plans to devote adequate resources to the project—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) Information that shows that the need for each activity or group of related activities is justified on the basis of how—

(1) The proposed activities will strengthen the educational leadership resources of the SEA; or

(2) The proposed activities will assist the SEA in identifying and meeting the critical educational needs of the State as described in section 521 (authorized activities for strengthening SEA management) of the Act. (20 points)

(g) Information that shows that the SEA is likely to achieve results and that these results will strengthen the SEA's management. (10 points)

(h) Information that shows the quality of the plan to disseminate information related to the program. (5 points)

(i) Information that shows that program activities are limited to elementary and secondary education program management. (6 points)

(j) Information that shows that program activities will supplement and not supplant activities supported with other Federal or State program and administrative funds. (10 points)

(k) Information that shows that program activities are included in the list of eligible activities in section 521 of the Act. (15 points)

(20 U.S.C. 3161, 3162)

Subpart D—Conditions That the State Must Meet

§ 208.31 Providing resources for other agencies of State government.

(a) An SEA shall describe, in its State plan, any planned provision of resources to other agencies or branches of State government under the title V-B program.

(b) Other agencies or branches of State government may use resources from the SEA so long as the activities supported by these resources are limited to the conduct of analyses of educational issues within the jurisdiction of the SEA.

(c) Only the SEA may approve the provision of resources to other agencies or branches of State government under this section.

(20 U.S.C. 3161(2))

§ 208.32 Carry-over funds.

(a) Under section 412(b) (availability of appropriations during a succeeding fiscal year) of GEPA, an SEA may carry over title V-B funds from one year's grant award and obligate them during the next year.

(b) (1) An SEA may carry over funds made available under title IV-C of the Act for the purposes of section 431(a)(3) (strengthening SEAs and LEAs) of the Act as it was in effect September 30, 1978.

(2) The SEA may obligate these carry-over funds under the authority of section 521 (authorized activities for strengthening SEA management) of the Act and the title V-B State plan in effect during the carry-over period.

(20 U.S.C. 1225(b), 1831(a)(3), and 3161)

§ 208.33 Evaluation by the State educational agency.

The SEA receiving a discretionary grant shall evaluate at least annually:

(a) The SEA's progress in achieving the objectives set forth in its approved amendment to its State plan.

(b) The effectiveness of the project in meeting the purposes of the program.

(c) The effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—Compliance Procedures Used by the Department

§ 208.40 Waiver of maintenance of effort.

(a) Because of exceptional and unforeseen circumstances affecting a State, the Secretary may waive the maintenance of effort requirements of section 404(a)(7) of the Act and of § 208.11 of this part if it is equitable to do so. This waiver is effective for one fiscal year only and may not be repeated.

(b) Examples of exceptional and unforeseen circumstances include—

(1) An unforeseen, substantial reduction of the tax base due to—

(i) A disaster of natural or human origin, or

(ii) A governmental action;

(2) An unforeseen, substantial diversion of available revenue to other purposes outside the control of the SEA due to emergency circumstances such as those resulting from a disaster of natural or human origin;

(3) An unforeseen, substantial decrease in expenditures by a State due to energy shortages or other emergency circumstances; and

(4) A one-time State appropriation to meet an unexpectedly acute educational need.

(c) Examples of circumstances the Secretary does not consider to be exceptional and unforeseen include—

(1) A deliberate, substantial reduction of available revenue due to an act of the State legislature or the electorate in other than emergency circumstances; and

(2) The failure of an SEA to maintain its fiscal efforts if it had the financial resources available to do this.

(d) In determining whether it is equitable to grant a waiver under paragraph (a) of this section, the Secretary considers—

(1) The extent to which the circumstances claimed to be exceptional and unforeseen were of the SEA's own making;

(2) The extent to which the SEA attempted to maintain its fiscal effort for programs described in section 521 (authorized activities for strengthening SEA management) of the Act despite those circumstances; and

(3) Any other factors the Secretary regards as relevant.

(20 U.S.C. 1232-1)

§ 208.41 Procedures for waiver of maintenance of effort.

The first time a State discovers it cannot comply with the assurance in its State plan to maintain effort, it shall—

(a) Promptly notify the Secretary and request a waiver for the appropriate fiscal year; and

(b) Amend its State plan to reflect the request for a waiver.

(20 U.S.C. 1232-1)

§ 208.42 Effect of waiver of maintenance of effort.

(a) If the Secretary grants a waiver of maintenance of effort under § 208.40, the Secretary reduces the total amount a State may receive for that fiscal year by the exact proportion its expenditures for the preceding fiscal year fell short of its expenditures for the second preceding fiscal year.

(b) The Secretary bases subsequent determinations of whether the State has maintained effort on the expenditures the Act would have required the State to have made had the Secretary not granted a waiver.

(20 U.S.C. 1232-1)

PART 209—ADMINISTRATION OF EDUCATION PROGRAMS AND DUTIES OF THE STATE EDUCATIONAL AGENCY

Subpart A—General

Sec.
209.1 Administration of education programs and duties of the State educational agency.
209.2 Eligible parties.
209.3 Regulations that apply to this program.
209.4 Definitions.

Subpart B—How a State Applies for a Grant

209.10 General application.
209.11 Publication of and comment on State plan.

Subpart C—How a Grant is Made to a State

Sec.
209.20 Application for administrative funds.
209.21 Additional administrative funds.

Subpart D—General Application From a Local Educational Agency

209.30 General application from a local educational agency.

Subparts E-F—[Reserved]

Subpart G—Administrative Responsibilities of the State

209.60 Accounting for administrative funds.
209.61 Monitoring and enforcement.
209.62 Evaluation.
209.63 Resolution of audit findings and recommendations.
209.64 State action to withhold funds.
209.65 Carry-over funds.

AUTHORITY: Title V, Part A, Elementary and Secondary Education Act of 1965, as amended, 92 Stat. 2240-2248 (20 U.S.C. 3141-3150), unless otherwise noted.

SOURCE: 45 FR 22685, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 209.1 Administration of education programs and duties of the State educational agency.

(a) This program provides for the consolidated administration by the State educational agency (SEA) of the title I (financial assistance to meet special educational needs of children) and the title IV (educational improvement, resources, and support) programs.

(b) The Act describes the means of receiving Federal financial support and the regulatory responsibilities and administrative duties of SEAs and local educational agencies (LEAs).

(20 U.S.C. 3141-3150)

§ 209.2 Eligible parties.

All SEAs that administer the title I and title IV programs are eligible for support under this program.

(20 U.S.C. 3141-3150)

§ 209.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The general regulations of the Department of Health, Education, and Welfare on Administration of Grants in Part 74.

(b) The regulations in this part.

(20 U.S.C. 3141-3150)

§ 209.4 Definitions.

(a) As used in the part—

"Act" means the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 89-10).

"Title I" means title I of the Act.

"Title IV" means title IV of the Act.

(b) The following terms used in this part are defined in the Act:

Local educational agency.
State.
State educational agency.

(20 U.S.C. 3141-3150, 881)

[45 FR 22685, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

Subpart B—How A State Applies for a Grant

§ 209.10 General application.

(a) An SEA may submit its general application under the authority of either—

(1) Section 501 (single State application) of the Act; or

(2) Section 435 (single State application) of the General Education Provisions Act (GEPA).

(b) If an SEA submits its general application under section 435 of GEPA, that general application must specifically identify titles I and IV as covered programs for the general application to be acceptable by the Secretary under paragraph (a) of this section.

(c) An SEA shall submit its general application in a form designed or approved by the Secretary.

(20 U.S.C. 3141, 1232d)

§ 209.11 Publication of and comment on State plan.

(a) (1) An SEA shall publish and circulate throughout the State the title I migrant education annual program plan and the title IV State plan at least 60 days before submitting the plan to the Secretary or before the effective date of the plan, whichever occurs earlier.

(2) The SEA shall indicate the date of publication on the State plan or annual program plan.

(b) Publication consists of at least paragraphs (b)(1) and (2) or of (3) of this section:

(1) The SEA shall send a copy of the plan to each LEA or each intermediate district or each county superintendent in the State.

(2) The SEA shall arrange for the printing of an announcement, in as many newspapers as will ensure circulation throughout the State, indicating that the plan is available for review in the office of the SEA and in the offices that received copies under paragraph (b)(1) of this section.

(3) The SEA may ask for the Secretary's approval to use other means that will accomplish effectively the purposes of this section.

(c) (1) In the publication or announcement the SEA shall identify a comment period of at least 30 days, within the 60-day period, for the receipt of comments.

(2) The SEA shall consider all written or oral comments received before the end of the comment period.

(20 U.S.C. 3141(b)(7)(B))

Subpart C—How A Grant Is Made to a State

§ 209.20 Application for administrative funds.

An SEA shall submit its application for administrative funds in accordance with the instructions and schedules of the Secretary.

(20 U.S.C. 3150)

§ 209.21 Additional administrative funds.

(a) Section 510(c) (payment of additional amounts) of the Act authorizes an additional 25 percent of the 1.75 percent amount authorized for administration of titles I and IV. To qualify, an SEA shall submit a budget for this additional amount at the time it submits its application for administrative funds under § 209.20 of this part.

(b) The SEA shall show in its budget that the additional funds will be spend for monitoring, audit resolution, or similar activities directly and exclusively related to enforcement of the requirements of titles I, IV, and V-A of the Act.

(c) If the State participates in the migrant education program under section 141 (entitlement and amount of grants for programs for migrant children) of the Act, the SEA shall describe in its annual program plan its intended use of any additional administrative funds for the administration of the migrant education program.

(20 U.S.C. 3150 and 2761)

Subpart D—General Application From a Local Educational Agency

§ 209.30 General application from a local educational agency.

An LEA that submits a general application to its SEA to comply with the provisions of section 436 (single LEA application) of GEPA shall also be considered to have met the requirements of section 502 (single LEA application) of the Act if—

(a) The general application under section 436 of GEPA specifically identifies titles I and IV as covered programs; and

(b) The assurance in section 502(b)(7)(C) of the Act—referring to the inclusion of works of art in construction projects—is also included in the general application under section 436 of GEPA, to the extent that this assurance applies to titles I and IV.

(20 U.S.C. 3142 and 1232e)

Subparts E-F—[Reserved]

Subpart G—Administrative Responsibilities of the State

§ 209.60 Accounting for administrative funds.

(a) If the Congress appropriates, under section 510(b) (appropriation authorization for title V-A) of the Act, a single fund for the purpose of administering the title I and title IV programs in a State, an SEA shall treat its allocation from this appropriation as a single account.

(b) If the Congress fails to appropriate administrative funds under section 510(b) of the Act, the SEA may not commingle—

(1) Funds under section 194 (State administrative funds for title I) of the Act used to administer the title I program in its State; and

(2) Funds under section 404(a)(8) (State administrative funds for title IV) of the Act used to administer the title IV program in its State.

(c) (1) The SEA shall use its section 194 funds solely for the administration of title I.

(2) The SEA shall use its section 404(a)(8) funds solely for the administration of title IV.

(3) The SEA shall account separately for the funds in (c)(1) and the funds in paragraph (c)(2) of this section.

(20 U.S.C. 3150, 2844, and 3084(a)(8))

§ 209.61 Monitoring and enforcement.

(a) An SEA shall follow the rules and procedures found in Subpart G, Administrative Responsibilities of the SEA and Applicant Agencies, of Part 200, Financial Assistance to Local and State Agencies to Meet Special Educational Needs, of this chapter in its monitoring of title I projects and enforcing the requirements of title I.

(b) An SEA shall follow the rules and procedures found in Subpart G, Administrative Responsibilities of the State and its Subgrantees, of Part 774, Educational Improvement, Resources, and Support, of this chapter in its monitoring of title IV projects and enforcing the requirements of title IV.

(20 U.S.C. 3146)

§ 209.62 Evaluation.

(a) To meet its responsibilities under section 501(b)(4) (evaluation of programs) of the Act to evaluate the effectiveness of the title I and title IV programs, an SEA shall design a program for evaluation of the management and impact of local projects.

(b) The evaluation designs for title I, title I migrant education, and title IV may differ from each other.

(20 U.S.C. 3141(b)(4))

§ 209.63 Resolution of audit findings and recommendations.

If an SEA administers the title I and title IV programs under the authority of title V-A of the Act, the SEA shall apply the following minimum standards for the resolution of audit findings and recommendations:

(a) The SEA shall insure that, no later than 30 days after the completion of an audit, it will send the final audit determination to—

(1) The affected LEA;

(2) The LEA's title I district advisory council if the audited project is a title I project; and

(3) The Secretary.

(b) After an affected LEA and its district advisory council have received the final audit determination, the SEA shall allow that LEA and its district advisory council 60 days to appeal that determination.

(c) Within 60 days after receiving an appeal, the SEA—or other individual or agency authorized by law to conduct hearings—shall conduct a hearing on that appeal.

(d) Within 60 days following the hearing on the appeal, the SEA—or other authorized individual or agency—shall issue a final decision.

(e) The LEA may appeal the final decision in accordance with section 509(d) (appeal of a final determination) of the Act.

(f) The SEA shall monitor the affected LEA to assure that the LEA carries out all corrective actions recommended in the final audit determination.

(g) The SEA shall assure the recovery of misspent or misapplied funds, either in a single payment or under the terms of a written agreement establishing repayments in specified installments over a period of no more than three years.

(20 U.S.C. 3149)

§ 209.64 State action to withhold funds.

(a) (1) If a State holds a hearing under section 508 of the Act—which deals with the potential withholding of payments under a title I or a title

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IV subgrant—an impartial decisionmaker shall conduct that hearing.

(2) (i) An impartial decisionmaker is an individual who is not an employee of the SEA or LEA involved in the hearing or a contractor of either agency.

(ii) However, an impartial decisionmaker may be a contractor hired specifically for the purpose of conducting hearings or an SEA employee who has no involvement in the case.

(b) (1) Following the hearing, the impartial decisionmaker shall recommend to the SEA findings of fact and conclusions of law.

(2) The SEA shall accept the impartial decisionmaker's findings of fact if those findings are supported by substantial evidence.

(c) If the definition of an impartial decisionmaker in paragraph (a) of this section is in conflict with State law or State practice, the SEA shall ask the Secretary to approve an individual or class of individuals to conduct the hearings.

(20 U.S.C. 3148)

§ 209.65 Carry-over funds.

(a) With respect to the carrying over of funds under section 412(b) of GEPA (availability of appropriations during a succeeding fiscal year)—

(1) The Secretary considers the program of administering title I to be a single program, whether funds are available under section 194 of the Act (State administrative funds for title I) or section 510(b) of the Act (appropriation authorization for title V-A);

(2) The Secretary considers the program of administering title IV to be a single program, whether funds are available under section 404(a)(8) of the Act (State administrative funds for title IV) or section 510(b) of the Act; and

(b) An SEA may spend carry-over administrative funds under the authority of whatever title of the Act or whatever State plan or application is in effect during the carry-over period.

(20 U.S.C. 1255(b), 2844, 3064(a)(8), and 3150(b))

PART 211—GUIDANCE AND COUNSELING

Subpart A—General

Sec.

211.10 Regulations that apply to the Guidance and Counseling Program.
211.11 Purpose.
211.12 Definitions.

Subpart B—[Reserved]

Subpart C—Improving Guidance Qualifications of Personnel and Improving Supervisory Services

211.25 Scope.
211.26 Purpose.
211.27 Eligible applicants.
211.28 Eligible participants.
211.29 Projects for training.
211.30 Projects for improving supervisory services.
211.31 Content of application.
211.32 State review of application.
211.33 Selection criteria.
211.34 [Reserved]
211.35 Allowable costs.
211.36 [Reserved]
211.37 Capacity to carry out the project.

Subpart D—Coordinating Guidance and Counseling Programs

211.40 Scope.
211.41 Purpose.
211.42 Eligible applicants.
211.43 Activities.
211.44 Required application data.
211.45 Selection criteria.
211.46—211.48 [Reserved]
211.49 Capacity to carry out the project.

AUTHORITY: Secs. 341-44, Pub. L. 94-482 (20 U.S.C. 2531-34), unless otherwise noted.

SOURCE: 42 FR 42754, Aug. 24, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 211.10 Regulations that apply to the Guidance and Counseling Program.

(a) *Regulations.* The following regulations apply to the Guidance and Counseling Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 211.

(b) *How to use regulations: how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22541, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.11 Purpose.

The purpose of this part is through Federal financial assistance, to:

(a) Provide programs, projects, and leadership activities by the State to expand and strengthen counseling and guidance services in elementary and secondary schools.

(Sec. 342(b)(1), 20 U.S.C. 2532(b)(1))

(b) Improve the professional guidance qualifications of teachers and counselors.

(Sec. 344(a), 20 U.S.C. 2534(a))

(c) Provide training for supervisory and technical personnel having responsibilities for guidance and counseling.

(Sec. 344(a), 20 U.S.C. 2534(a))

(d) Improve guidance and counseling supervisory services; and

(Sec. 344(a), 20 U.S.C. 2534(a))

(e) Coordinate new and existing programs of guidance and counseling in the States.

(Sec. 344(b), 20 U.S.C. 2534(b))

§ 211.12 Definitions.

As used in this part:

(a) "Guidance" means a program provided by or under the leadership and supervision of, professional counselors, involving teachers and resource personnel, to assist elementary and secondary school students in their educational, vocational, and personal-social development. A program of guidance services includes, but is not limited to, counseling, information, placement, appraisal, and follow-up and research.

(Interprets Sec. 341, 20 U.S.C. 2531)

(b) "Counseling" is one of the basic components which constitute a program of school guidance services, and means a process conducted by a professional counselor in face-to-face or group settings to assist the student for the purpose of resolving or better understanding a problem, or planning and carrying out a course of action.

(Interprets Sec. 341, 20 U.S.C. 2531)

(c) [Reserved]

(d) "Inservice training" means institutes, workshops, or seminars to improve guidance qualifications of teachers, counselors, and guidance supervisory and technical personnel in State and local educational agencies or nonpublic elementary and secondary school systems during their time of service.

(Interprets Sec. 344(a), 20 U.S.C. 2534(a))

(e) "Institution of higher education" means an institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (i) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (ii) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of paragraphs (e) (1), (2), (4), and (5).

(Interprets Sec. 344(a), 20 U.S.C. 2534(a))

(f)-(j) [Reserved]

(k) "Students" refers to elementary or secondary school students and not teachers, counselors, supervisors, and technical personnel who are participants in institutes, workshops, and seminars.

(Implements Sec. 344(a), 20 U.S.C. 2534(a))

(l) "Supervisory services" means those activities which are specifically designed to improve programs of guidance and counseling, and which are carried out by professional guidance personnel who have responsibilities within State and local educational agencies and nonpublic school systems for directing and coordinating the guidance and counseling efforts of staff members in the respective agencies or school systems.

(Interprets Sec. 344(a), 20 U.S.C. 2534(a))

[42 FR 42754, Aug. 24, 1977, as amended at 45 FR 22541, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart B—[Reserved]

Subpart C—Improving Guidance Qualifications of Personnel and Improving Supervisory Services

§ 211.25 Scope.

(a) This subpart applies to the award of grants under the program of guidance and counseling authorized by section 344(a) of Part D of Title III of Pub. L. 94-482.

(Sec. 344(a), 20 U.S.C. 2534(a))

[42 FR 42754, Aug. 24, 1977, as amended at 45 FR 22541, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.26 Purpose.

(a) The purpose of this subpart is (1) to improve the professional guidance qualifications of teachers, counselors, supervisory personnel, and technical personnel through inservice training to enable them more effectively to carry out their specific current roles, and (2) to improve supervisory services in the field of guidance and counseling;

(b) (1) Two kinds of projects will be funded under this subpart:

(i) Inservice training projects described in § 211.29; and

(ii) Projects to improve supervisory services described in § 211.30.

(2) An applicant may propose a single project with activities described under both of these sections.

(Interprets Sec. 344(a), 20 U.S.C. 2534(a))

§ 211.27 Eligible applicants.

The following agencies and organizations are eligible for grants under this subpart: (a) State educational agencies; (b) local educational agencies; (c) institutions of higher education; and (d) private nonprofit organizations.

(Sec. 344(a), 20 U.S.C. 2534(a))

§ 211.28 Eligible participants.

The following persons are eligible to participate as trainees in training programs funded under § 211.29:

(a) Teachers and counselors in State and local educational agencies;

(b) Teachers and counselors in nonpublic elementary and secondary school systems;

(c) Supervisory and technical personnel in State and local educational agencies with responsibilities for guidance and counseling; and

(d) Supervisory and technical personnel in nonpublic elementary and secondary school systems with responsibilities for guidance and counseling.

(Sec. 344(a), 20 U.S.C. 2534(a))

§ 211.29 Projects for training.

(a) *Nature of project.* (1) The projects funded under this section support inservice training programs in the form of institutes, workshops, and seminars to improve the professional guidance qualifications of teachers, counselors, and supervisory and technical personnel in their current roles, for the purpose of improving the guidance and counseling program provided to students in elementary and secondary schools.

(2) Two major emphases (among others) which an applicant may choose to address in these projects are:

(i) To increase the understanding of teachers and counselors about the world of business, industry, professions, and other occupational pursuits through exposure to these areas; and

(ii) To provide for increased use of men and women experienced in business, industry, the professions, and other occupational pursuits in guidance and counseling programs, by (A) bringing these persons into the schools as counselors and advisors for students; and (B) bringing students into the workplace for observation and participation to acquaint them with the nature of the work. The applicant may choose to emphasize non-traditional career alternatives for members of both sexes.

(3) To receive assistance under this part, an inservice training project must;

(i) Be designed on the basis of a needs assessment for a specific group of trainees; and

(ii) Serve as a resource for contributing to improved programs of guidance and counseling services within the schools served by the trained counselors or teachers. (For example, a counselor, as a participant in an institute provided by a grant recipient could spend one day a week in industry so that, upon completion, the counselor would be more aware of the opportunities and requirements of different occupations and would thus be able to provide a better program of guidance and counseling services.)

(4) Applicants may wish to propose specific training activities designed to demonstrate exemplary ways of involving persons from business and industry, the professions, and other occupational pursuits in guidance and counseling programs.

(5) Inservice training programs supported under this subpart must be short-term, with no program exceeding a year for each group of trainees. Normally, a workshop, institute, or seminar conducted on a daily basis may not exceed a three-month period for each group of trainees. However, training may be carried out on a more extended, but periodic basis, e.g., 1 to 6 hours a week, but for a period not to exceed a year.

(Implements Secs. 341, 344(a), 20 U.S.C. 2531, 2534(a))

(b) *Types of activities.* Projects designed for training purposes may include, among other training activities, one or more of the following:

(1) Inservice training programs which involve counselors and teachers in demonstration models which bring individuals with experience in occupational pursuits into schools as counselors or advisors for students, and which bring students into work-places to acquaint students with the nature of the work;

(2) Inservice training programs for teachers and guidance counselors in State and local educational agencies and non-public elementary and secondary school systems so that they can obtain experience in business and industry, the professions, and other occupational pursuits. (These programs may include individual and group experiences in observing or participating in various occupational pursuits); and

(3) Training of supervisory and technical personnel designed to improve the supervisory knowledge and skills, including effective management and administrative procedures, of persons assigned to guidance and counseling programs. As used in this paragraph, "supervisory and technical personnel" means professional guidance staff who have designated responsibilities within State and local educational agencies or nonpublic school systems for directing and coordinating the efforts of staff working in guidance programs in the respective agencies or school systems, or for providing technical assistance in such areas of specialty as elementary school guidance, student appraisal, career development, occupational information, counseling, techniques, and group procedures, to improve the quality of services within guidance and counseling programs.

(Implements Secs. 341, 344(a), 20 U.S.C. 2531, 2534(a))

§ 211.30 Projects for improving supervisory services.

(a) *Nature of projects.* (1) Projects under this section are designed to improve supervisory services of guidance and counseling in State and local educational agencies and nonpublic school systems, as opposed to concentrating on personnel qualifications of supervisory personnel.

(2) The Secretary encourages the submission of projects providing for exemplary supervisory practices which may serve as models for replication by other State and local educational agencies and nonpublic school systems. Exemplary approaches to accountability in terms of evaluating guidance outcomes is an example of a type of project which has potential for improving supervisory services. (Educational accountability includes a process of establishing objectives, delineating tasks and activities, and having personnel who are held responsible for accomplishing the objectives.)

(b) *Types of activities.* Activities designed to improve supervisory services in the field of guidance and counseling in State and local educational agencies and nonpublic elementary and secondary school systems may include, but are not limited to, one or more of the following:

(1) Expanding and coordinating supervisory services in guidance and counseling programs;

(2) Providing or increasing technical or consultative assistance to guidance and counseling personnel;

(3) Implementing or improving accountability through:

(i) Assessment of students' needs for guidance;

(ii) Planning and implementing guidance objectives; and

(iii) Evaluating guidance outcomes;

(4) Planning and preparing guidance and counseling materials and information; and

(5) Demonstrating successful supervisory practices in guidance and counseling.

(Implements Secs. 341, 344(a), 20 U.S.C. 2531, 2534(a))

§ 211.31 Content of application.

An application must include—

(a) Identification of the purpose and the type of activity—such as training or improved supervisory services—to which the application is addressed;

(b) [Reserved]

(c) An operational plan describing in detail how the applicant proposes to achieve the purpose(s) identified in the application.

(1) This plan must include, but need not be limited to:

(i) A description of the needs of prospective participants for the project, in relation to the needs of students served by these participants, and a description of how the needs were determined;

(ii) [Reserved]

(iii) Information on the size, scope, and duration of the proposed project;

(iv) A statement that the special needs of handicapped students and the need for reducing race and sex stereotyping have been considered in the development of the plan and a description of project activities or methods to be used to meet these needs;

(2) If the applicant proposes to improve the professional guidance qualifications of personnel, in addition to the other information required by this section, the following information must be included in the operational plan:

(i) A description of the target population, methods, and criteria to be used in selecting participants, including information to establish the eligibility of the participants under § 211.28;

(ii) Evidence of any commitment already received from outside organizations, groups, or individuals to cooperate in the implementation of the proposed activities, including any evidence of involvement with persons from business and industry, the professions, and other occupational pursuits and evidence of cooperation with other agencies and organizations which are involved in providing guidance and counseling services; and

(iii) In cases where an applicant proposes to train personnel who are not in their employ, a copy of the training agreement between the applicant and the agency or organization where the prospective trainees are located.

(Implements Sec. 344(a), 20 U.S.C. 2534(a))

[42 FR 42754, Aug. 24, 1977, as amended at 45 FR 22541, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.32 State review of application.

Each applicant under this subpart must give an opportunity to comment on its application to the State educational agency of each State in which is located the agency or organization to be served under a project for improving supervisory services or in which the prospective trainees are employed, as applicable.

(20 U.S.C. 2533(a)(3), 2534(a))

[45 FR 22542, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.33 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maxium 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 9 points) The application clearly describes the need, through documented evidence for training and/or improved supervisory services, and the procedures used in determining the need. The need should be based on the guidance needs of students in the location where trainees are employed.

(g) *Activities.* (Maximum 19 points) The application—

(1) Describes training or supervisory objectives and activities which respond effectively to the needs of students documented in the needs assessment;

(2) Describes project activities which are designed to serve as a resource for improving guidance and counseling services within schools which receive supervisory services, or which are served by teacher and counselor trainees;

(3) Gives evidence, in those applications proposing to provide training, of commitments from outside organizations, groups, or individuals to cooperate in the implementation of proposed activities or in those applications proposing to improve supervisory services, of plans for working with other appropriate units; and

(4) Clearly describes the criteria and processes for selecting participants in training activities and clearly describes criteria and processes for developing comprehensive and coordinated guidance programs in activities to improve supervisory services.

(h) *Distribution of projects.* (Maximum 9 points) The extent to which approval of the project will contribute to—

(1) An equitable geographic distribution of programs funded under this subpart throughout the United States in both urban and rural areas; and

(2) The funding of a wide variety of projects which collectively can demonstrate diverse approaches to meet effectively the purposes of this subpart.

(i) *Models.* (Maximum 10 points) The extent to which approval of the project will contribute to the establishment of a model or models which can be replicated by other agencies or institutions with similar educational needs. In applying this criterion, the Secretary shall consider—

(1) The extent to which similar needs to those addressed by the proposed project exists in other agencies or institutions; and

(2) The design of the proposed project.

(j) *Alleviation of unemployment among youth.* (Maximum 5 points) The extent to which approval of the project has potential for contributing to the alleviation of unemployment among youth through inter-relationships with business and industry, the professions, and other occupational pursuits.

(k) *World of work* (Maximum 5 points) The project involves inservice training to—

(1) Increase the understanding of teachers and counselors of the world of business, industry, professions, and other occupational pursuits through exposure to these areas; and

(2) To provide for increased use of persons employed in business, industry, the professions and other occupational pursuits in the guidance and counseling programs by—

(i) Bringing these persons into the schools to assist teachers and counselors; and

(ii) Bringing students into the workplace for observation and participation in order to acquaint them with the nature of the work.

(20 U.S.C. 2534(a))

[46 FR 5373, Jan 19, 1981]

§ 211.34 [Reserved]

§ 211.35 Allowable costs.

(a) [Reserved]

(b) Costs of equipment (other than guidance and counseling materials) are limited and allowed only if essential and reasonable in relation to anticipated results.

(c) Allowable costs may include travel, meals, lodging, guidance and counseling materials and supplies, and other costs incident to trainees' participation in institutes, workshops, and seminars, designed to improve professional guidance qualifications, but shall not include stipends or other forms of compensation. Payment of substitutes for teachers and counselors during the time of their participation in the inservice training is allowable only if specifically provided for in the approved application, or if otherwise approved in writing by the Secretary.

(d) (1) The costs of bringing representatives of business and industry, the professions, and other occupational pursuits into schools as counselors or advisors to students, and of bringing students into work-places to acquaint them with the nature of the work are allowable program costs only if carried out through workshops, institutes, or seminars and if they serve training purposes for participant counselors and teachers.

(2) Allowable costs of these activities (operated in institute, workshop, or seminar settings) are limited to travel, per diem expenses, and other incidental costs, and do not include stipends or other types of compensation to participant students, trainees, or representatives of occupational pursuits.

(Implements Sec. 344(a), 20 U.S.C. 2534(a), 1221c)

[42 FR 42754, Aug. 24, 1977, as amended at 45 FR 22541, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.36 [Reserved]

§ 211.37 Capacity to carry out the project.

Notwithstanding the specific evaluation criteria in § 211.23, the Secretary will not fund an application under this subpart unless the Secretary is satisfied that the applicant has the capacity successfully to carry out the project.

(a) In making this judgment, the Secretary will consider such factors as:

(1) Both the programmatic and financial management capacities of the applicant organization and its staff;

(2) Past performance by the applicant—

(i) In carrying out any prior grant under this part; or

(ii) In carrying out similar projects—with respect to such matters as achievement of objectives, adherence to the project conditions, programmatic and financial management, and the governing board's assumption of responsibility.

(3) Adequacy of facilities and other resources, including consideration of any litigation or dispute which calls into question the continued availability of the facilities and resources to the applicant; and/or

(4) Consideration of local community factors which may prevent the successful operation of the grant.

(b) If the Secretary decides not to fund an application based upon this section, the Secretary will do so only after providing reasonable notice and an opportunity to the applicant to rebut, in writing or in an informal meeting with the responsible officials of the Department, the basis for the decision.

(Implements Sec. 344(a), 20 U.S.C. 2534(a))

Subpart D—Coordinating Guidance and Counseling Programs

§ 211.40 Scope.

This subpart applies to the program of guidance and counseling for which grants are authorized by section 344(b) of Part D of Title III of Pub. L. 94-482.

(Sec. 344(b), 20 U.S.C. 2534(b))

§ 211.41 Purpose.

The purpose of the program authorized by this subpart is to assist States in coordinating new and existing programs of guidance and counseling in the States, working with the assistance of and in cooperation with the administrative unit within the Department responsible for coordinating and providing information on guidance and counseling under section 343(a), Part D, Title III of Pub. L. 94-482.

(Secs. 343(a)(3), 344(b), 20 U.S.C. 2533(a)(3), 2534(b))

§ 211.42 Eligible applicants.

Grants under this subpart may be made only to that State agency within each State which is vested with the direct and primary responsibility for State supervision of programs of guidance and counseling at the elementary and secondary school levels.

(Implements Sec. 344(b), 20 U.S.C. 2534(b))

§ 211.43 Activities.

Coordination of guidance and counseling programs supported under this subpart may include, but is not limited to, the following activities.

(a) Identification of guidance and counseling programs supported jointly or separately by Federal programs, and by State and local programs.

(b) Initiating and conducting a Statewide guidance and counseling needs assessment to determine priorities for program development;

(c) Development of a plan and strategies for implementing these programs in terms of common goals and objectives as determined through the needs assessment;

(d) Planning and conducting appropriate action to accomplish goals and objectives such as preparation of position statements, providing for consultative or technical assistance, conducting conferences and workshops, sharing information through appropriate publications and other means, evaluating program outcomes in terms of established objectives, and other related activities necessary for the coordination and improvement of new and existing programs of guidance and counseling in the State;

(e) Participating in the activities of the Department's administrative unit pursuant to section 343(a) of Pub. L. 94-482; and

(f) Commenting on applications under Subpart C of this part, as provided for in § 211.32.

(Interprets Sec. 344(b), 20 U.S.C. 2534(b))

§ 211.44 Required application data.

An application must include—

(a) [Reserved]

(b) An operational plan describing in detail how the applicant proposes to achieve the purposes of the program.

(1) The operational plan must include, but need not be limited to:

(i) A description of the needs to be met by the proposed plan; e.g., the need to reduce duplication of efforts in guidance and counseling in the State;

(ii)—(iii) [Reserved]

(iv) Plans to include other institutions and agencies in the proposed activities;

(Implements Sec. 344(b), 20 U.S.C. 2534(b))

[42 FR 42754, Aug. 24, 1977, as amended at 45 FR 22542, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 211.45 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 47 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points) The need for the proposed plan is clearly established.

(g) *Cooperative arrangements.* (Maximum 10 points) The strength and quality of arrangements made by the applicant to work with other appropriate institutions and agencies.

(20 U.S.C. 2534(b))

[46 FR 5374, Jan. 19, 1981]

§§ 211.46—211.48 [Reserved]

§ 211.49 Capacity to carry out the project.

Notwithstanding the specific selection criteria in § 211.45, the Secretary will not fund an application under this subpart unless the Secretary is satisfied that the applicant has the capacity successfully carry out the project.

(a) In making this judgment, the Secretary will consider such factors as—

(1) Both the programmatic and financial management capacities of the applicant organization and its staff;

(2) Past performance by the applicant—

(i) In carrying out any prior grant under this subpart; or

(ii) In carrying out similar projects—with respect to those matters as achievement of objectives, adherence to the project conditions, programmatic and financial management, and the governing board's assumption of responsibility; and/or

(3) Consideration of local community factors which may prevent the successful operation of the grant.

(b) If the Secretary decides not to fund an application based upon this section, the Secretary will do so only after providing reasonable notice and an opportunity to the applicant to rebut, in writing or in an informal meeting with the responsible officials of U.S. Department of Education, the basis for the decision.

(20 U.S.C. 2534(b))

[46 FR 5374, Jan. 19, 1981]

PART 215—FOLLOW THROUGH PROGRAM

Subpart A—Purpose and Definitions

Sec.
215.1 Program purpose.
215.2 Definitions.
215.3 Planned variation.
215.4 Regulations that apply to the Follow Through Program.

Subpart B—Grants for Local Follow Through Projects

ELIGIBILITY REQUIREMENTS AND PROCEDURES

215.11 Eligible applicants.
215.12 Eligible children.
215.13 Selection of grantees and application procedures.
215.15 Selection criteria for refunding of projects.
215.15a Additional funds for demonstration.
215.16 Financial support of projects.

PROJECT MANAGEMENT

215.18 Project coordinator.
215.19 Policy Advisory Committee.
215.20 Employment of low-income persons.
215.22 Parent-implemented projects.
215.24 Evaluation of program effectiveness.

PROJECT IMPLEMENTATION

215.25 Project design and development.
215.26 Program components.

PARTICIPATION OF PRIVATE SCHOOL CHILDREN

215.28 Numbers of private school children to be served.

Subpart C—Grants and Contracts for Technical Assistance

215.41 Grants and contracts with State educational agencies and other appropriate organizations for technical assistance and leadership.
215.42 Funding and selection criteria for grants or contracts.

Subpart D—Grants and Contracts for Demonstration

215.51 Eligible projects.
215.52 Selection criteria.

Subpart E—Federal Financial Participation

Sec.
215.63 Federal share of expenditures.
215.64 Non-Federal share.
215.65 Criteria for increase in Federal share.
215.65a Application for increase in Federal share and review of applications.
215.66 [Reserved]
215.67 Prohibition against supplanting.
215.68 Salary and wage limitations.

Subpart F—General Provisions

215.84 Suspension; refusal to refund.
215.85 [Reserved]
215.86 Limitation with respect to certain unlawful activities.
215.87 Political activities.

AUTHORITY: Title V. Pub. L. 88-452, 78 Stat. 516, as amended by Pub. L. 93-644, sec. 8(a), 88 Stat. 2306 (42 U.S.C. 2929, et seq.), unless otherwise noted.

SOURCE: 42 FR 33146, June 29, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—Purpose and Definitions

§ 215.1 Program purpose.

The Follow Through Program implemented by these regulations is an experimental community services program designed to assist, in a research setting, the overall development of children enrolled in kindergarten through third grade from low-income families, and to amplify the educational gains made by such children in Head Start and other similar quality preschool programs by (a) implementing innovative educational approaches, (b) providing comprehensive services and special activities in the areas of physical and mental health, social services, nutrition, and such other areas which supplement basic services already available within the school system, (c) conducting the program in a context of effective community service and parental involvement, and (d) providing documentation on those models which are found to be effective.

(Economic Opportunity Act, Title V, sec. 551, 554 (Pub. L. 93-644 sec. 8(a)))

§ 215.2 Definitions.

As used in this part:

"Act" means the Economic Opportunity Act of 1964, Pub. L. 88-452, (42 U.S.C. 2701 et seq.) as amended.

"Follow Through children" means all children in public or private school who have been enrolled in a Follow Through project in accordance with § 215.12.

"Follow Through parents" means all parents of children enrolled (or to be enrolled) in a Follow Through project, including the parents of private school children participating in the project.

"Head Start Agency" means an organization funded in whole or in part by the Office of Child Development, HHS, pursuant to Title V, Part A of the Act.

(Economic Opportunity Act, Title V, sec. 514 (Pub. L. 93-644 sec. 8(a)))

"Inservice training" means such specialized training as may be required or recommended for project staff during the course of employment in the Follow Through project.

"Low-income children" or "low-income person" means children or persons from families whose annual income falls at or below the official poverty line as defined by the Office of Management and Budget and as revised periodically by the Department of Education pursuant to section 625 of the Act.

"Paraprofessional" means a person who does not have a baccalaureate or equivalent degree of certification, but who directly assists persons in the performance of educational, social service, medical, or other duties of a professional nature in a Follow Through project, (e.g., teacher's aide, nurse's aide, or social worker aide).

"Preservice training" means workshops, courses, seminars, and other forms of specialized training which precede, and are required or recommended for, employment as a member of a Follow Through project staff.

"Primary grades" means grades 1 through 3 inclusive.

"Project sponsor" means a college, university, regional education laboratory, or other agency, organization or institution which receives a grant or contract to undertake some or all of the activities listed in § 215.51 and which maintains a contractual relationship with one or more local Follow Through projects for the purpose of conducting such activities in conjunction with such projects.

"Project area" means the local community or the smaller geographic area within such community (defined by school attendance zones or other similar neighborhood boundaries) in which a Follow Through project operates.

"Project staff" means all persons who work (full time or part time) directly in the Follow Through project, either on public or private school premises, whether or not such persons are paid with funds made available under the Act.

"Rural" as applied to a geographic area, means an area which is not included within a Standard Metropolitan Statistical Area (as defined by the U.S. Bureau of Census) and which is not within or coterminous with a city, town, borough, or village or other subcounty political unit, the population of which exceeds 2,500.

"Supplementary training" means the training of paraprofessionals and nonprofessionals in programs leading to college level degrees, particularly in the field of early childhood education.

(Economic Opportunity Act, Title V, sec. 551(a); 553(a)(1)(3) (Pub. L. 93-644 sec. 8(a)))

[42 FR 33146, June 29, 1977, as amended at 45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 215.3 Planned variation.

(a) Follow Through project grants are made to local educational agencies and other public or non-profit private agencies, organizations, or institutions in order to explore the effects of a number of promising approaches to the education of children from low-income families in the early elementary grades. Most grantees must agree to carry out the project in cooperation with project sponsors who have developed such approaches in affiliation with the Department.

(b) In order to assess the effectiveness of each approach, evaluation data is being collected by the Department. Because the collection of data will continue for a number of years, project and sponsor grantees are required to work together in the development and implementation of the sponsor's approach for the period of their participation in the Follow Through program except if the Secretary determines otherwise.

(Economic Opportunity Act, Title V, secs. 551, 553(a) (1), (2) (Pub. L. 93-644 sec. 8(a)))

§ 215.4 Regulations that apply to the Follow Through Program.

(a) *Regulations.* The following regulations apply to the Follow Through Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 215.

(b) *Exceptions to EDGAR.* An applicant for a continuation award under the Follow Through Program shall submit, in addition to the information required by EDGAR 34 CFR 75.118, information that addresses each selection criterion that applies to the program.

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart B—Grants for Local Follow Through Projects

ELIGIBILITY REQUIREMENTS AND PROCEDURES

§ 215.11 Eligible applicants.

(a) Except as provided in paragraph (b) of this section, the Secretary will provide financial assistance under this subpart, in the form of grants, only to local educational agencies.

(b) Whenever the Secretary determines that (1) a local educational agency receiving assistance under paragraph (a) of this section is unable or unwilling to serve private school children as required by § 215.28 or (2) it is otherwise necessary in order to best fulfill the purposes of Follow Through as set forth in § 215.1, he may provide financial assistance to be used for this purpose to a Head Start agency or other public or appropriate non-profit private agency, organization, or institution.

(Economic Opportunity Act, Title V, section 551(a) (1), (2) (Pub. L. 93-644 sec. 8(a)))

§ 215.12 Eligible children.

(a) *Low-income children.* Subject to the provisions of paragraph (b) of this section, only low-income children enrolled in the early elementary grades may participate in projects funded under this subpart. At least 50 percent of the children in each entering class shall be children who have previously participated in a full-year Head Start or similar quality preschool program and who were low-income children at the time of enrollment in such preschool program; except that the Secretary may reduce this percentage requirement in special cases where he determines that its enforcement would prevent the most effective use of Follow Through funds (e.g., where the grantee is implementing a racial desegregation plan).

(b) *Non-low-income children.* If the Secretary determines (1) that participation in the project of children from diverse socio-economic backgrounds would enhance the development of the low-income children to be served and would benefit the community in which the project is located, or (2) that such socio-economic diversity in a particular project will produce evidence concerning how best to fullfill the purposes of Follow Through as set forth in § 215.1, the Secretary may require or permit the inclusion of a specified percentage of children other than low-income children in the project. The inclusion of such other children in a project shall not in any case dilute or interfere with the services designed for low-income children. In order to prevent such dilution, families of such other children may be required to pay (to the extent that the family's financial situation makes payment appropriate), or have payment made in their behalf from some other source, e.g., by the grantee, for all or part of the identifiable costs of the services such children receive.

(c) *Procedures for selection.* Agencies proposing to operate or continue projects under this subpart shall establish procedures for identification and selection of eligible children which comply with the requirements of this section and shall set forth such procedures in the project proposal. Such procedures shall assure that every reasonable effort will be made (1) to serve first the poorest children enrolled under paragraph (a) of this section, and (2) to determine an equitable basis on which payment shall be made with respect to children enrolled under paragraph (b) of this section.

(Economic Opportunity Act, Title V, secs. 551(a), 553(a) (1), (2) (Pub. L. 93-644 sec. 8(a)))

[42 FR 33146, June 29, 1977, as amended at 45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 215.13 Selection of grantees and application procedures.

(a) In order to provide the necessary continuity for evaluation of the planned variation approaches provided for in § 215.3, grants will be given only to applicants who are successfully conducting Follow Through projects during the current fiscal year and who demonstrate the capability to continue to so operate projects in accordance with the planned variation approach.

(Economic Opportunity Act, Title V, secs. 551 (a) (1), (3); 553(a)(1) (Pub. L. 93-644 sec. 8(a)))

[42 FR 33146, June 29, 1977, as amended at 45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 215.15 Selection criteria for refunding of projects.

The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the application will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives

of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The proportion of children enrolled in the schools of the project who are low-income according to the official poverty line as defined by the Office of Management and Budget.

(g) The proportion of children enrolled in the schools of the project who are graduates of Head Start or similar preschool programs as required by § 215.12(a).

(h) The provision for parental and community involvement as required by § 215.26(b).

(i) The participation of Follow Through parents in the development and operation of the project as required by § 215.19(a) and (d).

(j) The role of the Policy Advisory Committee in recommending the filling of staff positions as required by § 215.19(d)(3) and (4);

(k) The extent to which the membership of the Policy Advisory Committee is composed of low-income parents elected by these parents as required by § 215.19(b);

(l) The extent to which the Policy Advisory Committee participates in the decision-making process in respect to important aspects of the project in accordance with § 215.19(d);

(m) The extent to which priority is given to low-income parents in the employment of nonprofessionals and paraprofessionals as required by § 215.20;

(n) If appropriate, the extent to which the supplementary training program is serving nonprofessional and paraprofessional staff of the project in accordance with § 215.26(h)(3).

(o) The role of the Career Development Committee as required by § 215.19(d)(9).

(p) The provision for staff training as required by § 215.26(g);

(q) The extent to which the instructional component is implemented as required by § 215.26(a).

(r) The provision and coordination of comprehensive services as required by § 215.25(b) and 215.26:

(1) Nutrition.

(2) Medical and dental services.

(3) Social services.

(4) Psychological services.

(5) Career development.

(s) The use or the coordination, or both, or other resources and programs with the project in accordance with § 215.25(b).

(t) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria such as those defined by § 215.24(b).

(Economic Opportunity Act, Title V, Secs. 551(a)(1), (3) 554(a) (Pub. L. 93-644 Sec. 8(a)))

[46 FR 5375, Jan. 19, 1981]

§ 215.15a Additional funds for demonstration.

For the purpose of conducting expanded demonstration activities, the Secretary may make additional funds available to certain applicants which have been selected for funding in accordance with § 215.15 for the same year for which the additional funds are to be made available. These applicants must have received a satisfactory rating with respect to all the funding criteria listed in § 215.15, and must have received an outstanding rating with respect to the funding criteria listed in § 215.15 paragraphs (q) and (t). The following additional criterion will be applied in making awards under this section: The extent to which the applicant has the capability of demonstrating educational practices to large numbers of interested persons. Factors to be used in determining this capability include the following: geographic location, ease of accessibility, availability of transportation and lodging facilities for large numbers of persons, and personnel resources. The requirements imposed by § 215.64 of this part with respect to non-Federal share do not apply to funds made available under this section.

(42 U.S.C. 2929b(a)(1))

§ 215.16 Financial support of projects.

The grantee shall support project activities conducted under this subpart through the following combination of resources:

(a) The normal effort (in funds and services) which the grantee is required to maintain under § 215.67 and upon which the project builds;

(b) The Federal funds appropriated under the Act and distributed under this subpart; and

(c) The non-Federal contribution required §§ 215.64 and 215.65.

(42 U.S.C. 2929, 2929a)

PROJECT MANAGEMENT

§ 215.18 Project coordinator.

(a) *Position.* Each grantee receiving funds under this subpart shall, with the approval of the Policy Advisory Committee described in § 215.19, appoint a project coordinator to be responsible for overall project management. The position of project coordinator shall be a full-time position, unless the Secretary, in individual cases, specifies otherwise.

(b) *Duties.* The project coordinator's duties shall include:

(1) Supervising all project staff;

(2) Serving as liaison between the project and Federal, regional, State, and local agencies involved in the Follow Through program;

(3) Working with the program sponsor to implement the program approach selected;

(4) Attending all relevant Follow Through meetings, workshops, and training sessions sponsored by the Secretary or by the project's program sponsor;

(5) Ensuring that project components and activities are interrelated so that children are not served in a fragmented manner; and

(6) Maintaining communication and cooperation among the program sponsor, Follow Through parents, Policy Advisory Committee members, project staff, administrative and other school staff, and the various community agencies and organizations which serve low-income persons.

(Economic Opportunity Act, Title V, sec. 551 (1), (2) (Pub. L. 93-644 sec. 8(a)))

§ 215.19 Policy Advisory Committee.

(a) *Purpose.* Each grantee shall, upon the identification of Follow Through project children, establish a Policy Advisory Committee, selected in accordance with paragraphs (b) and (c) of this section, to assist with the planning and operation of project activities and to actively participate in decision making concerning such activities.

(b) *Membership.* (1) More than one-half of the Policy Advisory Committee members shall be low-income Follow Through parents who are elected (or reelected) by such parents in elections held at least annually.

(2) The remaining members shall be chosen by the parent members, elected under paragraph (b)(1) of this section, from among the various persons and representatives of agencies and organizations in the community who have manifested concern in the interests of low-income persons.

(3) In no case shall an officer of the Policy Advisory Committee serve for more than two consecutive years as an officer.

(c) *Advisors.* At the request of the Policy Advisory Committee, elected or appointed officials and employees of the local educational agency (including project staff) in whose jurisdiction the project is located and any group contracted to work for such agency may serve in an advisory capacity to the Committee, but shall in no case have the right to vote.

(d) *Duties.* The Policy Advisory Committee's duties shall include:

(1) Developing by-laws which define the purposes and procedures of the Committee;

(2) Helping to develop all components of the project proposal and approving them in their final form;

(3) Assisting in the development of criteria for selection of professional staff and recommending the selection of such staff;

(4) Assisting in the development of criteria for the selection of nonprofessional and paraprofessional staff, exercising primary responsibility in recommending the selection of such staff for participation in the project and for participation in supplementary training programs which the Secretary may from time to time sponsor;

(5) Exercising the primary role in developing criteria for selection and recruiting of eligible children which are required by § 215.12;

(6) Contributing to the continued effectiveness of the project coordinator;

(7) Establishing and operating a procedure of petition and discussion under which complaints of parents and other interested persons can be promptly and fairly considered;

(8) Mobilizing community resources and securing the active participation of Follow Through parents in the projects;

(9) Supervising a Career Development Committee to provide direction and initiative for the career development component as required by § 215.26(h). The members of the Career Development Committee shall be appointed by the Policy Advisory Committee from among the following groups in numbers adequate to assure their effective representation:

(i) The low-income Follow Through parents, including low-income parent members of the Policy Advisory Committee, (ii) para-professionals and non-professionals working in the project, and (iii) the professional members of the project staff. The Career Development Committee's duties shall include: (i) Devising a career development plan in accordance with § 215.26(h), (ii) assisting the Policy Advisory Committee to fulfill its responsibilities under paragraph (d)(4) of this section for selecting paraprofessionals and nonprofessionals to participate in supplementary training programs which the Secretary may from time to time sponsor.

(e) *Funding.* (1) In order to facilitate the functioning of the Policy Advisory Committee, (i) the committee shall submit a proposed budget of its projected operational costs for each budget period to the grantee for inclusion in the grantee's application, and on the basis of such budget and the negotiations held and in accordance with local laws and regulations, shall at the beginning of each grant period allocate to the Committee a sum sufficient to allow it effectively to fulfill its responsibilities under paragraph (d) of this section.

(2) Funds allocated to the Policy Advisory Committee under paragraph (e)(1) of this section shall not be used for: (i) The purchase of classroom equipment, (ii) classroom instructional purposes, (iii) personal loans or expenditures.

(3) Policy Advisory Committee members may be compensated for attending a negotiation workshop, special conference or board of education meeting directly related to the Follow Through project at a rate not less than the Federal minimum wage nor more than the wages he would otherwise earn during such time, but in no event shall payments be made to members if no wages are actually lost.

(Economic Opportunity Act, Title V, secs. 551(a)(3), 554(a) (Pub. L. 93-644 sec. 8(a)); 20 U.S.C. 1231d)

§ 215.20 Employment of low-income persons.

Whenever an opening exists in project staff positions for nonprofessionals or paraprofessionals, the grantee shall actively solicit applications from low-income persons and give preference to such persons in hiring. The highest priority shall be accorded to low-income persons who are parents of Follow Through children. The grantee shall establish hiring procedures which assure that the Policy Advisory Committee will be primarily responsible for recommending the filling of nonprofessional and paraprofessional positions in accordance with § 215.19(d) (4).

(Economic Opportunity Act, Title V, sec. 554 (a) (Pub. L. 93-644 sec. 8(a))

§ 215.22 Parent-implemented projects.

(a) *Eligible projects.* The Secretary may designate certain of the projects funded under this subpart as parent-implemented projects. Both projects operated directly by nonprofit, private agencies or organizations constituted by parent groups to whom grants are awarded under § 215.11 (b)(2) and projects operated by other grantees who delegate significant operating authority to a parent group are eligible for such a designation.

(b) *Functions of parents.* In a parent-implemented project, the parents (as defined in paragraph (c) of this section) shall assume at least the following functions in regard to project management:

(1) All functions of the Policy Advisory Committee set forth in § 215.19(d); (2) all functions of the Career Development Committee set forth in § 215.19 (d)(9); (3) primary responsibility and authority for selecting the project coordinator and other project staff.

(c) *Definition.* For purposes of this section, "parents" means all parents of children enrolled or to be enrolled in the project or their duly elected representatives, except that, where the grantee is itself a parent group, it may choose to define "parents" to include the entire body of parents which it represents. In the latter case, the Follow Through parents shall be equitably represented on all boards or committees performing the functions specified in paragraph (b) of this section.

(Economic Opportunity Act, Title V, sec. 551 (a)(3) (Pub. L. 93-644 sec. 8(a)); 20 U.S.C. 1231d)

§ 215.24 Evaluation of program effectiveness.

(a) [Reserved]

(b) *Standards for evaluation.* In evaluating the effectiveness of the Follow Through Program, the Secretary uses standards such as the following:

(1) Comparisons of cognitive and affective development of the children served with non-Follow Through children;

(2) Comparison of the cognitive and affective development of Follow Through children, who participated in Head Start and other quality preschool programs with the cognitive and affective development of Follow Through children who did not;

(3) Extent of parent involvement in the project, including participation in the decision-making process and participation in the classroom as paid employees or volunteers, and the effect of the project upon parental attitudes concerning the school and education in general;

(4) Extent of medical and dental care, of psychological services, and of social services available to low-income Follow Through children;

(5) Evidence of changes in school programs and in institutional rules and practices which increase the responsiveness of the educational system to low-income children and their parents;

(6) Evidence of positive changes in attitudes of program participants towards themselves and the community; and

(7) Evidence of coordination of community services (e.g., medical services) with the participating schools and their responsiveness to the needs of low-income persons.

(Economic Opportunity Act, Title V, sec. 551(a)(1), (3), 553(a)(2) (Pub. L. 93-644 sec. 8(a)))

[42 FR 33146, June 29, 1977, as amended at 45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PROJECT IMPLEMENTATION

§ 215.25 Project design and development.

(a) *Services and activities.* Each Follow Through project assisted under this subpart shall be designed to fulfill the special purposes of Follow Through set forth in § 215.1 by providing services and activities which focus upon all aspects of child learning and development. The services and activities incorporated into the project proposal shall include all of the program components set forth in § 215.26.

(Economic Opportunity Act, Title V, sec. 551(a)(1), (3))

(b) *Coordination.* In designing and developing the project, the grantee shall provide for coordination among the various program components set forth in § 215.26 to prevent fragmentation of services, and for coordination of each such program component with related community agencies and resources to prevent duplication of existing services. Each program component shall be developed with the participation of (1) the Policy Advisory Committee established under § 215.19; (2) interested community agencies and organizations, including the Head Start agency; and (3) to the extent appropriate, the project's program sponsor.

(c) *Policy Advisory Committee approval.* No program proposal shall be approved or funded by the Secretary without the prior approval of all program components by the Policy Advisory Committee, unless the Secretary determines that the basis of the Committee's refusal to approve the proposal is inconsistent with these regulations.

(Economic Opportunity Act, Title V, sec. 551(a)(3) (Pub. L. 93-644 sec. 8(a)); 20 U.S.C. 1231d)

§ 215.26 Program components.

Unless the Secretary in particular cases specifies otherwise, each Follow Through project shall include at least the following program components:

(a) An instructional component which, generally through association with a program sponsor, implements a particular innovative approach to the education and development of low-income children;

(b) A parent and community involvement component which actively involves parents and other interested persons in the community in all aspects of the project through such activities as (1) participation in the work of the Policy Advisory Committee and other parent groups; (2) participation in the classroom as observers or volunteers, or as paid employees under § 215.20; (3) regular home visits and other contacts initiated by project staff; and (4) participation in educational and community activities developed through other program components;

(c) A health component, developed with the direct assistance of health professionals, which responds to both short- and long-range needs by providing (1) screening, referral, and corrective treatment services for all low-income Follow Through children; (2) preventive activities such as health education for Follow Through children and their families; and (3) activities designed to encourage and improve related community health services and maximum opportunities for their continuation even after conclusion of the Follow Through project;

(d) A social services component designed to aid families of low-income Follow Through children in identifying and solving family problems and to assist in the development of more effective community social services for low-income families;

(e) A guidance and psychological services component which (to the extent consistent with the program approach of the project's program sponsor) utilizes trained psychological personnel to assist the psychological development of low-income Follow Through children through (1) classroom observation followed by consultation with teachers, teacher aides, and other staff members; (2) staff development of pertinent Follow Through personnel; (3) work with the Follow Through parents; and (4) testing and appropriate follow-up for Follow Through children where necessary;

(f) A nutrition component which provides for (1) a daily-type-A lunch (as defined by the U.S. Department of Agriculture); (2) breakfast and snack where necessary; (3) nutrition education and counseling for Follow Through children and their parents; and (4) training in nutrition for Follow Through staff members;

(g) A training component which includes:

(1) Pre-service and in-service training, developed with the assistance of the project sponsor, for the Follow Through staff members including parent coordinator, social services aides and other ancillary personnel;

(2) Orientation activities for non-Follow Through personnel who have responsibilities relating to the Follow Through project;

(h) A career development component for paraprofessionals and nonprofessionals coordinated with other education opportunities which includes:

(1) The implementation of a career development plan which is established for the purpose of providing for increases in both salary and job responsibility on the basis of job experience, academic background, and other relevant factors;

(2) The provision for guidance and counseling in career development;

(3) The provision of supplementary training; and

(4) The provision of other education opportunities through such means as high school equivalency programs and vocational training programs.

(Economic Opportunity Act, Title V, sec. 551(a)(1), (3) (Pub. L. 93-644 sec. 8(a)))

PARTICIPATION OF PRIVATE SCHOOL CHILDREN

§ 215.28 Numbers of private school children to be served.

(a) Local educational agencies receiving assistance under this subpart, and other agencies, organizations, and institutions receiving such assistance for projects in which one or more local educational agencies participate, shall serve public and private school children in equitable proportions. Such proportions shall approximate the relative proportions of low-income children enrolled at the entering grade level served by the project in the public and private schools in the local education agency's school district who are graduates of a full-year Head Start or similar quality pre-school program.

(b) If a grantee is unwilling or unable to serve public and private school children in equitable proportions as required by paragraph (a) of this section, the Secretary may appropriately reduce the funds to which such grantee would otherwise be entitled and award another contract or grant under § 215.11(b) for the purpose of serving that proportion of private school children which such grantee would otherwise have served. In determining the amount to be withheld from the latter grantee, the Secretary will take into account (1) the number of private school children who are excluded from effective participation in the Follow Through project, and who, except for such exclusion, might reasonably have been expected to participate; (2) the number of staff that would reasonably have been required to serve such children, and (3) the nature and extent of services being provided to public school children by the project from which private school children are excluded.

(Economic Opportunity Act, Title V, sec. 551(a)(1), (2) (Pub. L. 93-644 sec. 8(a)))

Subpart C—Grants and Contracts for Technical Assistance

§ 215.41 Grants and contracts with State educational agencies and other appropriate organizations for technical assistance and leadership.

The Secretary may make grants to State educational agencies and contracts with other appropriate agencies, organizations, or institutions to enable them to provide technical assistance to local Follow Through projects and otherwise exercise leadership in regard to Follow Through activities in the State. Activities undertaken for such purpose may include, but need not be limited to, familiarizing State educational agency personnel with the Follow Through program and with the projects in their States through on-site visits and other means; promoting the coordination of Follow Through with other State and local programs having similar objectives; assisting local projects to identify and make maximum use of available public and private resources which can contribute to the development of comprehensive projects; assisting local projects to improve school-community relationships; assisting local projects to evaluate project activities and to disseminate information regarding project activities and their evaluation; and assisting local projects with staff training and developmental programs.

(Economic Opportunity Act, Title V, Sec. 553 (a)(3) (Pub. L. 93-644 Sec. 8(a)))

§ 215.42 Funding and selection criteria for grants or contracts.

(a) *Level of funding.* The amount of a grant or contract awarded under this subpart may not exceed the total of:

(1) $4,000, which is the base rate;

(2) $2,000, for each Follow Through project expected to be in operation during the period for which the application is being made; and

(3) An amount arrived at by multiplying the relative incidence of children from low-income families in the State by the amount remaining after subtraction of the total amount computed for all States under paragraphs (a) (1) and (2) of this section, from the total amount available for funding grants and contracts under this subpart. The Secretary may increase the amounts stated in paragraph (a)(2) of this section, on a case by case basis.

(b) *Selection criteria.* The Secretary uses the criteria in this paragraph (b) to evaluate applications for grants and proposals for contracts under this subpart. The criteria are not weighted, but are each rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Programmatic.* (i) The extent to which the applicant has shown or will show familiarity with the Follow Through program and the projects in its State through site visits and other means;

(ii) The extent to which the applicant will promote coordination of Follow Through with other State and local programs having similar objectives;

(iii) The extent to which the applicant will assist local projects in identifying and making the maximum use of available public and private resources which can contribute to the development of comprehensive projects;

(iv) The extent to which the applicant will assist local projects in improving parent-school-community relationships;

(v) The extent to which the applicant will assist local projects in evaluating project activities and disseminating information regarding project activities and their evaluation; and

(vi) The extent to which the applicant will assist local projects with staff training and development programs.

(7) *Management.* The extent to which the applicant will seek information from the local project sites to meet their project needs for technical assistance.

(Economic Opportunity Act, Title V, Sec. 553(a)(3) Pub. L. 93-644 Sec. 8(a))

[46 FR 5376, Jan. 19, 1981]

Subpart D—Grants and Contracts for Demonstration

§ 215.51 Eligible projects.

(a) *Activities.* The Secretary may make awards in the form of grants or contracts, to public and private agencies, organizations, and institutions for the purpose of developing and implementing approaches to the education and development of disadvantaged children, which approaches can serve as models for use in Follow Through and similar programs. Activities undertaken with such assistance may include:

(1) The implementation of classroom instructional techniques and approaches;

(2) The implementation of methods for enlisting and utilizing the parents of disadvantaged children in the educational process;

(3) The implementation of methods for enlisting and utilizing members of the community (other than the parents referred to in paragraph (a)(2) of this section) in the educational process;

(4) The development and application of methods for the evaluation of educational programs designed for disadvantaged children, and for the use and dissemination of information derived from such evaluation; and

(5) The development of techniques for, and the provision of, specialized training for teachers and other personnel (both professional and nonprofessional) involved in the education of low-income children.

(Economic Opportunity Act, Title V, sec. 553(a)(1) (Pub. L. 93-644 sec. 8(a)))

(b) *Special problems.* In addition to the assistance provided under paragraph (a) of this section, the Secretary may also, where he has determined that projects of the type funded under paragraph (a) of this section can benefit therefrom, make grants or contracts for research pertaining to special problems encountered in the education of disadvantaged children.

(Economic Opportunity Act, Title V, sec. 553(a)(1) (Pub. L. 93-644 sec. 8(a)))

§ 215.52 Selection criteria.

The Secretary provides financial assistance under this subpart only to those applicants who sponsor educational approaches currently being implemented in the Follow Through program. The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding:

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate;

(f) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria in § 215.24(b).

(g) The extent to which parents have been and will be involved in sponsor activities.

(h) The extent to which the sponsor has provided and will provide for the training of—

(1) Administrators;

(2) Teachers;

(3) Teacher aides and other paraprofessionals;

(4) Parents; and

(5) Others.

(Economic Opportunity Act, Title V, Sec. 553(a)(1) (Pub. L. 93-644 Sec. 8(a)))

[46 FR 5376, Jan. 19, 1981]

Subpart E—Federal Financial Participation

§ 215.63 Federal share of expenditures.

The Federal share of expenditures incurred under Follow Through grants and contracts made pursuant to this part, up to the total specified in the award document, shall be:

(a) For local projects under Subpart B of this part (excluding Supplementary Training and the additional funds for demonstration awarded under § 215.15(a)), the difference between the non-Federal share required by § 215.64 and total expenditures;

(b) For Supplementary Training under Subpart B and for technical assistance under Subpart C of this part, 100 percent of expenditures; and

(c) For demonstration programs under § 215.15(a) of Subpart B and Subpart D of this part, 100 percent of expenditures.

(Economic Opportunity Act, Title V, secs. 551, 552(b), 553(a) (1), (3) (Pub. L. 93-644 sec. 8(a)))

§ 215.64 Non-Federal share.

Subject to the provisions of § 215.63 the grantee shall share part of the costs of a Follow Through project funded under Subpart B of this part. That share (hereinafter, "non-Federal share") is an amount equal to not more than:

(a) 20 percent of the total (combined Federal and non-Federal) appproved cost of the project if the project comprises one grade level;

(b) 18.5 percent of that cost if the project comprises two grade levels;

(c) 14.5 percent of that cost if the project comprises three grade levels; and

(d) 12.5 percent of that cost if the project comprises four or more grade levels.

Once the project has reached its highest grade level (at least four grades, unless no kindergarten is in operation in the school district) and has operated at that level for a period of two project years, the non-Federal share increases again up to the maximum 20 percent, rising in the same increments (one per year) in which it decreased to its lowest point.

(Economic Opportunity Act, Title V, sec. 552(b) (Pub. L. 93-644 sec. 8(a)))

[42 FR 33146, June 29, 1977, as amended at 45 FR 22537, Apr. 3, 1980]

§ 215.65 Criteria for increase in Federal share.

The Secretary is authorized to increase the Federal share of the cost of a project indicated in § 215.63(a) under the following circumstances:

(a) *Minimum per capita income of area which project serves.* (1) Where the total per capita personal income in 1973 in the county which the Follow Through project serves was less than $3,000 per year as stated in the April 1975 edition of "Survey of Current Business" published by the U.S. Department of Commerce (tables on pages 36-53); or

(2) If based on recent reliable data, the total per capita personal income of the county which the Follow Through project serves was less than $3,000 per year in a year later than 1973; or

(3) If the recipient can demonstrate, using reliable data, that the total per capita personal income of the political subdivision of the county which the Follow Through project serves, or of the project area, was less than $3,000 in 1973 or any later year; or

(4) If, in the case of a project serving migratory children or Indian children on reservations, it is demonstrated, based on reliable data, that the total per capita personal income of the group being served by that project was less than $3,000 in 1973 or any later year.

(b) *Major disaster in project area.* Where a major disaster has occurred in the area served by the Follow Through project and that major disaster affects the capability of the applicant to operate the project unless the Federal share of the total approved cost is increased above 80 percent. For purposes of this paragraph "major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other natural catastrophe.

(c) *Inability of local support agency to obtain current financing.* If the Follow Through grantee is being supported wholly or in part by local funds and the county or city (or political subdivision of the county or city) which provides local funds to the grantee is recognized under Federal law as being eligible for Federal financial assistance during the fiscal year in which the project is carried out, because of the inability or threatened inability of that county, city, or political subdivision to obtain current or seasonal financing from its customary sources;

(d) *Unusual circumstances.* If the financial or human resources which would otherwise be available for use in the Follow Through project have been significantly reduced by unusual circumstances (other than those referred to in paragraphs (b) and (c) of this section) affecting the city, county, or political subdivision of the city or county being served by the project.

(42 U.S.C. 2929a(b))

§ 215.65a Application for increase in Federal share and review of applications.

(a) *Contents of application.* An applicant which desires an increase in the Federal share of a Follow Through project as authorized by § 215.65 shall request this increase in writing and in this request include the following:

(1) A statement of the applicant's reason for requesting the increase, supported by information sufficient to enable the Secretary to determine the validity of the reason for the request. This information shall indicate, where relevant, the total per capita personal income of the county, city, or political subdivision of the county or city served by the project, or the total per capita personal income of the group being served by the project, and the source or sources of this information concerning total per capita personal income;

(2) Information showing that the applicant has made a reasonable effort to provide the non-Federal share required by § 215.64;

(3) A statement of the amount of the non-Federal share which the applicant is able to provide, and the extent to which this contribution is in kind.

(b) *Projects serving more than one area.* An applicant whose project serves more than one county, city, or political subdivision of a county or city, may apply for financial assistance in excess of 80 percent of the total (combined Federal and non-Federal) approved cost of that portion of the project serving the county, city or political subdivision which is eligible for an increase in the Federal share under § 215.65.

(c) *Review of applications.* Based on the Secretary's review of an application submitted under paragraph (a) of this section and such additional evidence as may be required, the Secretary may approve the application for a reason specified in § 215.65 in any amount up to 100 percent of the total approved cost of the project, or may disapprove the application. The Secretary shall render a decision in writing and shall include a statement of the facts and the reasons for the decision.

(d) *Period of increase.* The Secretary may not approve an increase in the Federal share for any period in excess of one year, but may renew approval upon resubmission of a written application that complies with this section.

(42 U.S.C. 2929a(b))

§ 215.66 [Reserved]

§ 215.67 Prohibition against supplanting.

Services and activities provided with funds made available under Subpart B of these regulations shall be in addition to, and not in substitution for, services and activities previously provided without Federal assistance.

(Economic Opportunity Act, Title V, sec. 552(c) (Pub. L. 93-644 sec. 8(a)))

§ 215.68 Salary and wage limitations.

To the extent paid from Federal funds or matching non-Federal funds, the rate of compensation of persons engaged in activities funded under this part shall not be less than the prevailing Federal minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, nor more than the average rate paid to a substantial number of the persons providing substantially comparable services in the community where the project is located or, if higher, the average rate paid for such services in the area of the employee's immediately preceding employment.

(Economic Opportunity Act, Title V, sec. 573(a) (Pub. L. 93-644 sec. 8(a)))

Subpart F—General Provisions

§ 215.84 Suspension; refusal to refund.

(a) The Secretary only suspends assistance under this program in an emergency. An emergency exists if there is evidence of flagrant misuse of funds by a recipient, or evidence of unauthorized activity by the recipient that poses a threat of harm to children participating in the program. (See 34 CFR Part 78 for the procedures of the Education Appeal Board.)

(b) The Secretary does not deny applications for refunding under this part unless the applicant has been given reasonable notice and opportunity to show cause why this action should not be taken.

[45 FR 22537, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 215.85 [Reserved]

§ 215.86 Limitation with respect to certain unlawful activities.

No individual employed or assigned by any agency assisted under this part shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this part by such agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(Economic Opportunity Act, Title V, sec. 574(b) (Pub. L. 93-644 sec. 8(a)))

§ 215.87 Political activities.

(a) For purposes of clauses (1) and (2) of section 1502(a) of title 5 of the United States Code, any agency receiving assistance under this part shall be deemed to be a State or local agency.

(b) Programs assisted under this part shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity.

(Economic Opportunity Act, Title V, sec. 576 (a), (b) (Pub. L. 93-644 sec. 8(a)))

PART 218—HEARINGS IN CONNECTION WITH SCHOOL CONSTRUCTION AND FINANCIAL ASSISTANCE IN FEDERALLY IMPACTED AREAS

Sec.

218.1 Definitions.
218.2 Opportunity for hearing.
218.3 Procedure in requesting hearing.
218.4 Reconsideration after request or order for hearing.
218.5 Time and place of hearing.
218.6 Right to counsel.
218.7 Procedures, evidence, and record.
218.8 Decisions and notices.
218.9 Decisions on record or review by Secretary.
218.10 Other determinations not affected by this part.

Authority: Secs. 208, 7, 64 Stat. 975, 1107, secs. 101, 201, 209, 1, 9, 64 Stat. 967, 1100, sec. 301, 67 Stat. 522; 20 U.S.C. 631-645, 236-242, 244.

Source: 18 FR 6707, Oct. 22, 1953, unless otherwise noted. Redesignated at 35 FR 256, Jan. 7, 1970, and 45 FR 77368, Nov. 21, 1980.

§ 218.1 Definitions.

Terms defined in Pub. L. 815, 81st Congress (64 Stat. 967), as amended, and Pub. L. 874, 81st Congress (64 Stat. 1100), as amended, and not defined in this section shall have the meaning given such terms in such public laws. As used in this part, the following terms shall have the meaning indicated in paragraphs (a) to (e) of this section:

(a) [Reserved]

(b) *Pub. L. 815.* "Pub. L. 815" means Public Law 815, 81st Congress (64 Stat. 967), as amended.

(c) *Pub. L. 874.* "Pub. L. 874" means Public Law 874, 81st Congress (64 Stat. 1100), as amended.

[24 FR 3880, May 14, 1959. Redesignated at 35 FR 256, Jan. 7, 1970, and amended at 38 FR 30658, Nov. 9, 1973, and further redesignated at 45 FR 77368, Nov. 21, 1980]

§ 218.2 Opportunity for hearing.

(a) Any applicant whose application under Pub. L. 815 or Pub. L. 874 is disapproved by the Secretary, or his delegatee, in whole or in part, or which is dissatisfied with the Secretary's action, or failure to act (or that of his delegatee), upon its application under such public laws shall be entitled to a hearing thereon.

(b) A hearing shall be given to an applicant dissatisfied with an adverse administrative action of the Secretary (or of his delegatee) with respect to its application only (1) if a written request for such a hearing with respect to such action is filed with the Secretary within 60 days of notice to the applicant of such action; and (2) if the action at issue is material to the determination of the applicant's rights and is not committed wholly to the discretion of the Secretary. The time within which such a request for hearing must be filed will not be extended by a request for reconsideration or by reconsideration by the Secretary on his own motion, unless the time for filing such request is extended in writing by the Secretary.

(c) In the event the Secretary has reason to believe that further payments to an applicant under Pub. L. 815 should be withheld by reason of the failure of the applicant to comply with the conditions of such law, he shall so notify the applicant. Such notice, a copy of which shall likewise be sent to the State educational agency, shall either (1) advise the applicant of the specific provision under which the Secretary's action is taken and the basis for his belief and fix a date not less than 20 days, nor more than 60 days, after the date of such notice within which the applicant may request that the matter be scheduled for hearing in due course; or (2) advise the applicant that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be subject to change for cause. The failure of an applicant without the consent of the Secretary to request a hearing under paragraph (c)(1) of this section or to appear at a hearing for which a date has been set, shall be deemed to be a waiver of the right to a hearing under this subsection and consent to the Secretary making a decision on the basis of such information as is available to him.

[18 FR 6707, Oct. 22, 1953, as amended at 24 FR 3880, May 14, 1959. Redesignated at 35 FR 256, Jan. 7, 1970, and further redesignated at 45 FR 77368, Nov. 21, 1980]

§ 218.3 Procedure in requesting hearing.

A request by an applicant for a hearing in accordance with this part must be addressed to the Secretary and must clearly specify in writing the issues of fact and law to be considered, and, where the applicant is not a State agency, a copy of such request should be furnished to the State educational agency by the applicant.

§ 218.4 Reconsideration after request or order for hearing.

The request for a hearing, or the fact that any matter or issue has been scheduled for hearing, under this part, shall not prejudice any request for reconsideration of any determination made by the Secretary or his delegatee, but the pendency of any such request for reconsideration shall not constitute a basis upon which postponement of the hearing can be demanded as of right by the applicant or by the Secretary.

§ 218.5 Time and place of hearing.

Hearings on any matter included in § 218.2 shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary, unless the Secretary determines that the convenience of the applicant or of the Department requires that another place be selected.

§ 218.6 Right to counsel.

In all proceedings under this part, the applicant and the Secretary shall have the right to be represented by proper counsel.

§ 218.7 Procedures, evidence, and record.

(a) The hearing officer shall conduct the hearing and shall issue such rules of procedure as are proper (and not inconsistent with this part) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 218.5, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The application in question and all relevant amendments and exhibits submitted therewith shall be made a part of the hearing record. Both the Department and the applicant shall be entitled to introduce all relevant evidence on the issues as stated in the notice or request for hearing or as determined by the hearing officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination or by other means shall be applied by the hearing officer where reasonably necessary. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

§ 218.8 Decisions and notices.

If the hearing is held by a person other than the Secretary, such person shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and written notice of such initial decision or certification shall be mailed to the applicant. Where the initial decision is made by the hearing officer, and in the absence of either an appeal to the Secretary or review upon motion of the Secretary within time limits stated in this section, such decision shall without further proceedings constitute the final decision of the Secretary. The applicant may within thirty days of the mailing of such notice of initial decision request the Secretary to review it. The Secretary may grant or deny such request or may within forty-five days after the initial decision review it on his own motion. Written notice of the Secretary's action granting or denying a request for review or of his determination to review it on his own motion shall be mailed promptly to the applicant.

§ 218.9 Decisions on record or review by Secretary.

Whenever a record is certified to the Secretary for decision or the Secretary determines to review the decision of another person pursuant to § 218.8, or whenever the Secretary conducts the hearing, the applicant shall be given reasonable opportunity to file with the Secretary briefs or other written statements of its contentions, and the final decision of the Secretary in such cases promptly shall be given in writing to the applicant.

§ 218.10 Other determinations not affected by this part.

Nothing in this part shall be construed to bar the Secretary reconsidering any determination under Pub. L. 815 and 874 unless such determination has been the subject of a hearing under this part.

PART 219—SCHOOL CONSTRUCTION ASSISTANCE IN CASES OF CERTAIN DISASTERS

Subpart A—Definitions

Sec.

219.1 Definitions.

Subpart B—Financial Assistance

219.2 Eligibility for financial assistance.
219.3 Payments.
219.4 Special procedures for obtaining pinpoint disaster assistance.

Subpart C—Applications

219.8 Applications.
219.10 Determination of priorities among applications.
219.11 Prohibition against payment for religious worship or instruction.

Subpart D—General

219.16 Applicability of General Provisions Regulations.
219.17 Nondiscrimination against handicapped individuals.

AUTHORITY: Section 16, (79 Stat. 1158) added to Pub. L. 81-815 (20 U.S.C. 646) as amended, unless otherwise noted.

SOURCE: 41 FR 50777, Nov. 17, 1976, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Definitions

§ 219.1 Definitions.

As used in this part—

(a) "Act" means Pub. L. 815, 81st Congress (64 Stat. 976), as amended, section 16 of which was added by the first section of Pub. L. 89-313 (79 Stat. 1158) and amended by Pub. L. 90-247.

(20 U.S.C. 646)

(b) "Complete application" means a preapplication, Exhibit M-4 of Federal Management Circular 74-7 and such other supplemental information as the Secretary may request.

(20 U.S.C. 636(b)(1), 646(c))

(c) "Disaster review team" means a group comprised of representatives of the Department, Office of Facilities Engineering and Property Management, the State educational agency (when available), and local educational agencies.

(20 U.S.C. 646)

(d) "Filed" means that all necessary parts of the preapplication or the complete application, as appropriate, bearing the required certification and verifications by the State educational agency, are received by the Secretary on or before the applicable filing date.

(20 U.S.C. 636 (a), (b)(2)(B), (c))

(e) "Incident period" means: (1) For major disasters those days officially designated by the President or his representative as the dates upon which major disaster damages occurred; (2) for pinpoint disasters the day(s) determined by the Secretary to be the date(s) on which the pinpoint disaster damages occurred.

(20 U.S.C. 646)

(f) "Initial equipment" means any movable equipment necessary and appropriate to equip school facilities.

(20 U.S.C. 645(9), 646(a))

(g) "Latent damages" means those damages which, in the judgment of the Secretary, constitute disaster caused damages to school facilities which may not be apparent immediately following the incident period of the disaster.

(20 U.S.C. 646(a))

(h) "Local educational agency" as used in this part is defined in sections 15(11) and 16(a)(1)(A)(B) of the Act. If the local education agency as so defined does not have the responsibility for providing school facilities, and that responsibility is vested in a State, county, city, or town agency, then the term shall include such an agency, together with the agency having exclusive administrative control and direction of other phases of free public education.

(20 U.S.C. 645(11), 646(a)(1)(A)(B))

(i) "Major disaster area" means an area which is determined, pursuant to sections 102(2) and 301 of the Disaster Relief Act of 1974 to have suffered, after August 30, 1965, a major disaster as a result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government. That certification which is required by section 301 of the Disaster Relief Act of 1974 by the Governor of the State in which such an area is located (relating the need for disaster assistance in that area and providing assurance of the expenditure of a reasonable amount of the funds of the government of that State, or of a political subdivision thereof) will be accepted to meet the certification requirement contained in section 16(a)(2) of the Act, if it contains sufficient information to meet the purposes of that section.

(20 U.S.C. 646 (a)(1)(A), (a)(2), 1224(c); 42 U.S.C. 4402(1))

(j) "Member" of a school shall be determined in accordance with State law or regulation. In the absence of State law or regulation, such a member is a child who has presented himself at school and has been placed on the current roll. Such a child shall be considered a member from the date of enrollment until he permanently leaves the school. Permanent leaving shall be determined under State rules if such are applicable, but the date of permanent withdrawal shall be the date on which it is officially known that the pupil has left school, and not necessarily the first day after the date of last attendance. Notwithstanding the above, if contracts to make tuition payments with regard to certain children are utilized, then membership shall be determined in accordance with the provisions of section 15(5) of the Act.

(20 U.S.C. 645(5))

(k) "Membership" means the sum of members of a school as defined in § 219.1(i).

(20 U.S.C. 645(5))

(l) "Minimum school facilities" means:

(1) For major disasters, the lesser of either paragraph (i) or (ii) of this section: (i) Those school facilities necessary to operate a program of free public education for the membership of the applicant at normal capacity in accordance with the laws and customs of the State, plus those school facilities to serve, in the facilities of such agency, those children referred to in section 16(a)(5)(B) of the Act, or

(ii) Those school facilities which existed prior to the disaster (limited, however, to replacement of such areas in like-kind), plus those which are necessary to serve, in the facilities of such agency, those children referred to in section 16(a)(5)(B) of the Act;

(2) For pinpoint disasters, the lesser of either paragraph (i) or (ii) of this section:

(i) Those school facilities necessary to operate a program of free public education for the membership of the applicant at normal capacity in accordance with the laws and customs of the State, or

(ii) Those school facilities which existed prior to the disaster (limited, however, to replacement of such areas in like-kind).

(3) Such term does not include (i) Athletic stadiums or structures or facilities intended primarily for athletic exhibitions, contests, or games or other events for which admission is to be charged to the general public; or (ii) interests in land and off site improvements.

(4) Such term may include an auditorium or gymnasium, or both, if justified by the size of the school's enrollment, the educational program to be conducted and the standards and practices in the State. Such facilities may provide seating only for the capacity of the student enrollment. The limitation concerning the inclusion of auditoriums and gymnasiums, and the seating capacity of such, shall not apply to those situations covered by paragraphs (l)(1)(ii) and (2) of this section.

(5) Air conditioning may be provided to replace any air conditioning which existed prior to the disaster. If no such air conditioning existed prior to the disaster, then it may be provided as minimum school facilities in all States which are in whole or in part south of the 39° parallel, provided a letter is obtained from the authorized representative of the State that air conditioning is being provided in school facilities currently being constructed solely with State and local funds. Such air conditioning may be provided in any other State only if such letter is

obtained and supported by a survey which substantiates that air conditioning is provided in a majority of recently constructed school facilities within the State.

(20 U.S.C. 645(9), (10), 646 (a)(5))

(m) "Normal capacity" of a schoolroom means the number of pupil stations which the room accommodates under ordinary conditions in accordance with the laws and customs of the State governing free public education.

(20 U.S.C. 646(a))

(n) "Pinpoint disaster" as used in this part means one caused by a flood, hurricane, earthquake, storm, fire, or other catastrophe. Such disaster must be local in extent and not of sufficient severity or magnitude to be determined by the President to be a major disaster pursuant to section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)). It does not include loss or damage caused by negligence or malicious action. In the case of a disaster of unknown origin, such as a fire, it will be presumed that such disaster is not a pinpoint disaster within the meaning of this part, unless sufficient evidence is presented to enable the Secretary to determine that the disaster was not caused by negligence or malicious action.

(20 U.S.C. 646(a)(1)(B))

(o) "Preapplication" means Exhibit M-1 of FMC 74-7 and such supplemental information as may be requested by the Secretary.

(20 U.S.C. 646(c))

(p) "Repayable advance" means funds furnished by the Secretary to any local educational agency, which the Secretary shall be entitled to recover as set forth in the terms and conditions of the advance.

(20 U.S.C. 646(a))

(q) "Replacement or restoration of school facilities" means the reconstruction of school facilities and the making of substantial structural repairs to school facilities which were seriously damaged or destroyed.

(1) Such term does not include the making of urgent repairs to protect the school facilities from further damage or deterioration or to render the school facilities immediately available for the providing of free public education.

(2) Such term includes reasonable expenditures in order to avoid or reduce future flood losses (including relocation), in accordance with Executive Order 11296. The reasonableness of such expenditures will be determined by the Secretary on an individual basis, based upon such factors as (i) a comparison of such expenditures with the cost of restoring or replacing the facility excluding such expenditures, (ii) the probable consequence of a failure to make such expenditures, and (iii) comparative cost of alternative methods of avoiding or reducing future flood losses.

(3) Such term includes such additional amounts that the Secretary may approve in order to assure that the facilities, as restored or replaced, will afford appropriate protection against personal injuries resulting from a disaster.

(20 U.S.C. 646(a); E.O. 11296; 88 Stat. 522)

(r) "Replacement of area in like-kind" means the cost of replacing or restoring the total area of the facility seriously damaged or destroyed which was in use at the time of the disaster with a similar permanent or temporary facility. Permanent school facilities include those facilities which are erected or constructed on the site for school purposes, affixed to the site and which have a utilization period of not less than 20 years from the date of being so affixed. Temporary school facilities means all other school facilities, including those facilities which (1) may be classified as portable, relocatable, demountable, mobile trailers or frame structures and (2) are moved onto the site for an indefinite period. An applicant may use the amount estimated as necessary to replace or restore temporary facilities to instead construct permanent facilities.

(20 U.S.C. 646(a))

(s) "School facilities" includes such facilities as defined in section 15(9) of the Act. Such term includes only such facilities which (1) were in use prior to the occurrence of a major disaster, or a pinpoint disaster, including classrooms and related facilities; or (2) are newly constructed facilities which the applicant accepted from the builder as being completed; and (3) are facilities for the replacement or restoration of which the local educational agency or public agency is legally responsible under the State law. Such facilities may include cafeteria facilities.

(20 U.S.C. 645(9), (10), 646 (a) (1), (3), (4))

(t) "Seriously damaged" means that a school facility, structure or a portion thereof has been rendered unusable or partly unusable for school purposes for an extended period of time.

(20 U.S.C. 646 (a)(1), (3))

(u) "Terms and conditions" include the rate of interest, duration of loan, the method of repayment, and other pertinent requirements applicable to the Secretary's advance.

(20 U.S.C. 646(a))

(v) "Total square feet of floor area" means the sum of the square feet of a facility in use for school purposes at the time of the disaster from the exterior wall surface to exterior wall surface, at the respective floor levels.

(20 U.S.C. 646(a))

[41 FR 50777, Nov. 17, 1976. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

Subpart B—Financial Assistance

§ 219.2 Eligibility for financial assistance.

(a) Eligibility for financial assistance will be determined in accordance with the provisions of the Act, and in the case of a major disaster in accordance with section 7(a)(4) of Pub. L. 81-874.

(20 U.S.C. 241-1(a)(4), 646(a)(6))

(b) In all cases determined pursuant to paragraph (a) of section 16, if the Secretary finds that funds other than Federal funds will, in the near future, become available to the local educational agency specifically for the purpose of providing school construction assistance in cases of such disasters, then Federal financial assistance may, to the extent that such funds are to become so available, be in the form of a repayable advance, subject to repayment, without interest, when available.

(20 U.S.C. 646(a))

(c) Factors which the Secretary will consider when determining whether damages require restoration or replacement under section 16 of the Act (as contrasted with minor repairs authorized under section 7(b) of Pub. L. 81-874 (20 U.S.C. 241-1) include the following:

(1) The ratio of section 16 funds available to the total estimated cost of replacement or restoration of the destroyed or seriously damaged facility;

(2) The speed at which such replacement or restoration may be accomplished with the local, State, and Federal funds available;

(3) Whether the remaining structure must be razed before replacement or restoration can commence;

(4) Whether the applicant intends to rebuild on another site;

(5) Whether the applicant plans restoration which will differ significantly from the original design of the structure that was damaged;

(6) Whether the applicant plans to use the amount estimated as necessary to repair under said section 7(b), or restore under said section 16, the damaged facility to: (i) Construct new facilities; or (ii) repair or restore the damaged facilities; and

(7) Whether an insurance settlement is made on the basis of major structural damage to the facility.

(d) Federal financial assistance under section 16 of the Act will be limited to the amount deemed by the Secretary to be necessary as additional assistance (after considering practicably available local, State or Federal resources) in order for the local educational agency to provide for the replacement or restoration of minimum school facilities destroyed or seriously damaged as a result of a disaster:

(1) When such a school facility is seriously damaged but not destroyed, financial assistance under this section will be limited to the lesser of the following costs, as determined by the Secretary.

(i) The cost of restoring the facility on the same foundation on the same site: or

(ii) The cost of replacing the facility on the same site or a new site;

(2) When such a school facility is destroyed, financial assistance under this section may be provided to replace the facility, at the existing site or at a new site, whichever costs, as determined by the Secretary, will be the lesser;

(3) Costs for replacement or restoration may include, if appropriate, the cost of demolition of all or part of the affected portion of the seriously damaged or destroyed facility, and in the case of a major disaster, the cost of replacement, with public school facilities, of those minimum private elementary or secondary school facilities which were destroyed and which will not be replaced.

(e) Assistance will be provided under section 16 of the Act only if the Secretary, after consultation with appropriate State and local educational agencies, finds that the replacement or restoration of the seriously damaged or destroyed school facilities (1) would not be inconsistent with overall State plans with respect to the construction of school facilities; and (2) includes such reasonable steps as may be desirable to minimize future Federal expenditures for flood protection and flood disaster relief in accordance with Executive Order 11296.

(20 U.S.C. 646(c); E.O. 11296)

(f) Federal financial assistance provided under section 16 of the Act (as being necessary to enable the local educational agency to provide the needed minimum school facilities), will not exceed (1) the total needed to pay for the costs of construction incident to the replacement or restoration of school facilities destroyed or seriously damaged as a result of a disaster, and (2) in the case of a major disaster the amount needed to provide the minimum school facilities needed to serve, in the facilities of said agency, children who but for the serious damage to or destruction of private facilities would be served by said private facilities (less all amounts available to the applicant specifically for such a purpose from local, State, other Federal sources, and from the proceeds of insurance, including interest earned thereon, on the school facilities destroyed or seriously damaged as a result of the major disaster). The applicant will be expected to prosecute insurance claims promptly and to the full legal limit. It is not necessary to replace facilities destroyed or seriously damaged with identical facilities, provided that the replacement facility constitutes replacement of area in like-kind with minimum school facilities.

(20 U.S.C. 646(a))

(g) Funds available for replacement or restoration of school facilities destroyed or seriously damaged as a result of a disaster include:

(1) All unobligated or unencumbered non-Federal funds which the Secretary determines have been set aside in the nature of an insurance reserve for the purpose of replacing or restoring those school facilities of the applicant that are destroyed or seriously damaged.

(2) The proceeds of bonds that have been voted specifically for the replacement of a school facility which is destroyed or seriously damaged.

(3) If funds described n paragraph (g)(1) or (g)(2) of this section are not immediately available, the Secretary may provide assistance in the form of an advance to be repaid, without interest, from such proceeds when they become available as determined by the Secretary.

(4) To the extent that State law requires the maintenance by local educational agencies of an insurance program or other monetary reserve fund for the restoration or replacement of destroyed or seriously damaged school facilities, the amount of insurance or reserve required under such law shall be considered as funds available to the applicant for the purpose of determining need for assistance under this part whether or not the applicant has maintained such insurance or monetary reserve.

(20 U.S.C. 646(a) (4), (5))

(h) The school facility so provided must be functional and not elaborate in design or extravagant in the use of materials in comparison with school facilities of a similar type constructed in the State within recent years. All replacement or restoration work must be undertaken in an economical manner.

(20 U.S.C. 646(a)(4),(c))

(i) All determinations made by the Secretary under this part shall be made only after consultation with the appropriate State educational agency and local educational agency.

(20 U.S.C. 646(c))

§ 219.3 Payments.

(a) Payments to an applicant under section 16 of the Act will be made only on the basis of a complete application which satisfies the conditions for payment prescribed by section 16 of the Act and the regulations in this part.

(b) Upon approval of the complete application of a local educational agency under section 16(a)(1)(A) of the Act, the Secretary may pay to such agency an amount equal to 10 per centum of the estimated cost of the construction incident to the replacement or restoration of the school facilities destroyed or seriously damaged as a result of a major disaster.

(c) Upon approval of the complete application of a local educational agency under section 16(a)(1)(B) of the Act, the Secretary shall enter into a loan agreement with the local educational agency. Such agreement shall state the amount of the loan; payments, if other than lump sum; rate of interest; duration of loan; place, medium, and amounts of repayments; description of bonds, if such are to be issued. All loans from the Federal Government to the local educational agency shall be for a period of not more than 5 years at the prevailing rate of interest established by the Small Business Administration for disaster assistance in major disaster areas.

(d) No construction contract exceeding the estimated cost as shown in the project application shall be entered into without prior approval.

(20 U.S.C. 636(b)(1), 646 (a), (c), (d), 1232(c))

§ 219.4 Special procedures for obtaining pinpoint disaster assistance.

Upon the occurrence of a pinpoint disaster, the local educational agency desiring Federal assistance shall request the Governor of the State, through the State educational agency, to present to the Secretary a request for Federal assistance. The Governor's request shall contain:

(a) A certification of the need for disaster assistance and assurance of the expenditure of a reasonable amount of the funds of the government of such State or any political subdivision thereof, in addition to any insurance proceeds and the interest earned thereon, for purposes of restoration, replacement, or construction of school facilities destroyed or seriously damaged by such disaster, which shall include:

(1) A statement of the amount of State and local funds available or to be made available to replace or restore such destroyed or seriously damaged school facilities; and

(2) An estimate of the amount of Federal assistance needed.

(b) A statement of the date and cause of the disaster as a result of which public elementary or secondary school facilities of the local educational agency have been destroyed or seriously damaged, including a certification by the Governor that the disaster was not caused by negligence or malicious action.

(c) An estimate of the extent of damage resulting from the disaster;

(d) A certification by the Governor that the applicant maintained, at the time of the disaster, insurance coverage on the school facilities destroyed or seriously damaged in an amount equal to the full valuation of those facilities at that time.

(e) A statement from the State Attorney General that under State law local education agencies have the authority to enter into an agreement with the Federal government for acceptance of a repayable advance as described under this part.

(20 U.S.C. 646 (a), (c))

Subpart C—Applications

§ 219.8 Applications.

(a) Federal financial assistance under section 16 of the Act will be provided on the basis of a complete application which is filed by an applicant, and which sets forth the basis for eligibility for such assistance and identifies the project or projects for which such assistance is requested.

(b) Preapplications must be filed with the Secretary through the appropriate State educational agency as follows:

(1) In the case of a major disaster, on or before 90 days following that date on which the area in which the local educational agency is, in whole or in part, located is designated as being within a major disaster area;

(2) In the case of a pinpoint disaster, a preapplication must be filed on or before:

(i) 90 days following the effective date of the regulations in this part pertaining to such type of disaster; or

(ii) 90 days following the date on which the disaster occurred, whichever is later.

(3) Whenever such date falls on a Saturday, Sunday or Federal holiday, the final day for filing the preapplication shall be the next succeeding business day. The complete application must be filed with the Secretary within 90 days of the notice of preapplication review action. In the event that necessary decision-making processes at local and State levels prevent the filing of a preapplication by the applicable filing date, a "letter of intent" to file a preapplication within 180 days and a complete application within 360 days after the occurrence of the disaster must be filed with the Secretary.

(20 U.S.C. 636(b)(1), 636(c))

§ 219.10 Determination of priorities among applications.

(a) The Secretary will determine the order of priority for all project applications involving the replacement or restoration of school facilities, the destruction of or serious damage to which requires the relocation of students. Such applications of all local educational agencies will be assigned priorities in descending order on the basis of the percentage, that the total number of children in the school district who are so relocated (after deducting the number of children within the local educational agency who were considered in connection with another such priority with respect to the same disaster) bears to the total memberships of all schools in the school district. Such membership will be determined on the basis of the latest and best information available. In the case of a major disaster only, the number of children reported as requiring relocation must include the number of children displaced from private schools as a result of the major disaster who are to be served by the local educational agency and who, but for the destruction of the private school facilities, would be served by the private facilities.

(b) All other applications for the replacement or restoration of school facilities destroyed or seriously damaged as a result of a disaster will be assigned priorities lower than the priorities assigned under paragraph (a) of this section. Priorities will be assigned to school facilities under this paragraph (b) on the basis of the amount of financial assistance requested, and estimated by the Secretary to be reasonable in amount, in comparison with the unused bond sale capacity for public school facilities available to the school district in which the school facility to be restored or replaced was located. The unused bond sale capacity will be computed on the basis of facts as of the date of the determination of the disaster. Such applications of all local educational agencies will be assigned priorities in descending order on the basis of the percentage that the amount of the financial assistance so determined with respect to all such applications (after deducting the amount of such financial assistance under such applications previously assigned to priority in accordance with the order of their consideration that is specified by the local education agency) bears to the unused bond sale capacity available to the school district in which the school facility to be restored or replaced was located.

(20 U.S.C. 646 (b), (c))

§ 219.11 Prohibition against payment for religious worship or instruction.

Nothing contained in the Act or the regulations in this part shall be construed to authorize the use of payments made under the Act for religious worship or instruction.

(20 U.S.C. 646(a)(6); 241-1(a)(4))

Subpart D—General

§ 219.16 Applicability of General Provisions Regulations.

(a) Provisions contained in Parts 100 and 100a of the regulations entitled "General Provisions for Department Programs" are applicable to programs conducted under the Act, with the following exceptions:

(1) Section 100a.26(b) (Criteria for review of applications);

(2) Section 100a.161 (Title to site);

(3) Subpart L, §§ 100a.209-100a.220 (Property management requirements);

(4) Section 100a.233 (Sale of real and personal property); and

(5) Section 100a.235 (Other program income).

(b) It should be noted that certain of the provisions in such regulations are not, by their own terms, pertinent to activities which may be conducted pursuant to the Act, such as:

(1) Section 100a.19 (Cooperative arrangements);

(2) Section 100a.43 (Application for Federal assistance (nonconstruction projects));

(3) Section 100a.45 (Application for Federal assistance (short form));

(4) Section 100a.62 (Payment methods for nonconstruction projects);

(5) Section 100a.82 (Institutions of higher education);

(6) Section 100a.83 (Nonprofit organizations);

(7) Subpart H, §§ 100a.90-100a.94 (Matching and cost sharing);

(8) Section 100a.122 (Loan guarantees);

(9) Section 100a.234 (Royalties); and

(10) Section 100a.258 (Leasing facilities).

§ 219.17 Nondiscrimination against handicapped individuals.

Federal financial assistance is subject to section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112).

(29 U.S.C. 794)

PART 220—ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN CASES OF CERTAIN DISASTERS

Subpart A—Definitions

Sec.
220.1 Definitions.

Subpart B—Financial Assistance in Areas Affected by Disasters

220.2 Financial assistance for providing free public education pursuant to section 7(a) of the Act.
220.3 Assistance for the replacement of supplies, equipment, and materials for minor repairs for the leasing of facilities pursuant to section 7(b) of the Act.
220.4 Special procedures for obtaining pinpoint disaster assistance.

Subpart C—Applications

220.8 Applications.
220.9 Dates for filing applications.
220.10 Notification to applicants.
220.11 Reports.
220.12 Inadequacy of Federal funds.
220.13 Method of payment.
220.14 Prohibition on payment for religious worship or instruction.

Subpart D—General

220.18 Applicability of General Provisions Regulations.
220.19 Nondiscrimination against handicapped individuals.

AUTHORITY: Sec. 7 of Pub. L. 81-874, as amended, 79 Stat. 1158 (20 U.S.C. 241-1), unless otherwise noted.

SOURCE: 41 FR 50781, Nov. 17, 1976, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Definitions

§ 220.1 Definitions.

As used in this part—

(a) "Act" means Pub. L. 874, 81st Congress (64 Stat. 1100), as amended, section 7 of which was first added by Pub. L. 89-313 (79 Stat. 1159) and as amended by Pub. L. 90-247.

(20 U.S.C. 241-1)

(b) "Average daily attendance," hereinafter referred to as "ADA," means ADA as determined in accordance with State law except (notwithstanding any other provisions of the

Act) where the local educational agency in which a child resides makes or contracts to make tuition payment for free public education of such a child in a school situated in another local educational agency. In the latter case, for the purposes of section 7 of the Act, the attendance of such a child at such school shall be considered (1) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (2) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

(20 U.S.C. 241-1(a), 244(10))

(c) "Complete application" means an application and such other supplemental information as the Secretary may request.

(20 U.S.C. 241-1(d))

(d) "Disaster review team" means a group comprised of representatives of the Department, Office of Facilities Engineering and Property Management, the State educational agency (when available), and local educational agencies.

(20 U.S.C. 241-1(a))

(e) "Filed" means that all necessary parts of the complete application bearing the required certification and verifications by the State educational agency are received by the Secretary on or before the applicable filing date.

(20 U.S.C. 241-1(d))

(f) "Incident period" means: (1) For major disasters, those days officially designated by the President or his representative as the dates upon which major disaster damages occurred; (2) for pinpoint disasters the day(s) determined by the Secretary to be the date(s) on which the pinpoint disaster damages occurred.

(20 U.S.C. 241-1)

(g) "Latent damages" means those damages which, in the judgment of the Secretary, constitute disaster-caused damages to instructional and maintenance supplies, equipment, materials, and school facilities which damages may not be apparent immediately following the incident period of the disaster.

(20 U.S.C. 241-1(b))

(h) "Local educational agency" is defined in sections 403(6)(A) and 7(a)(1)(A) of the Act.

(20 U.S.C. 244(6)(A), 241-1(a)(1)(A))

(i) "Major disaster area" means an area which is determined, pursuant to sections 102(a) and 301 of the Disaster Relief Act of 1974 to have suffered, after August 30, 1965, a major disaster as a result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government. That certification which section 301 of the Disaster Relief Act of 1974 requires from the Governor of the State in which such area is located (of the need for disaster assistance in such area and the assurance of the expenditure of a reasonable amount of the funds of the government of that State, or of any political subdivision thereof) will also be deemed to meet the certification requirement contained in section 7(a)(2) of the Act.

(20 U.S.C. 241-1 (a)(1)(A), (a)(2); 84 U.S.C. 1748)

(j) "Minor repairs" means that restoration of equipment, materials, and portions of school and cafeteria facilities (including site, grading, and improvements) to their original condition or efficiency from a disaster-damaged condition and which restoration is immediately necessary and may be accomplished within a reasonably short period of time.

(20 U.S.C. 241-1(b), 244(13))

(k) "Pinpoint disaster" as used in this part means one caused by a flood, hurricane, earthquake, storm, fire, or other catastrophe. Such disaster must be local in extent and not of sufficient severity or magnitude to be determined by the President to be a major disaster pursuant to section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)). It does not include loss or damage caused by negligence or malicious action. In the case of a disaster of unknown origin, such as a fire, it will be presumed that such disaster is not a pinpoint disaster within the meaning of this part, unless sufficient evidence is presented to enable the Secretary to determine that the disaster was not caused by negligence or malicious action.

(20 U.S.C. 241-1(a))

(l) "Repayable advance" means funds furnished by the Secretary to any local educational agency, which the Secretary shall be entitled to recover as set forth in the terms and conditions of the advance.

(20 U.S.C. 646(a))

(m) "School facilities" as used in this part is defined in the Act at section 403(13). Such term includes only such facilities which:

(1) Were in use prior to the occurrence of a major disaster, or a pinpoint disaster, including classrooms and related facilities;

(2) Are newly constructed facilities which the applicant accepted from the builder as being completed; and

(3) Are facilities for the repair of which the local educational agency or public agency is legally responsible under the State law. Such facilities may include cafeteria facilities.

(20 U.S.C. 244(13))

(n) "State financial assistance" (or "State aid") with respect to free public education means any contribution, for which no repayment is expected, made by a State to or on behalf of a local educational agency within the State for the support of free public education. For the purposes of section 7(a) of the Act, such assistance does not include those payments by a State to or on behalf of a local educational agency which are made as a result of a disaster.

(20 U.S.C. 241-1(a)(3), 240(d)(2))

(o) "Terms and conditions" include the duration of loan, the method of repayment, and other pertinent requirements applicable to the Secretary's advance.

[41 FR 50781, Nov. 17, 1976. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980; 46 FR 10154, Feb. 2, 1981]

Subpart B—Financial Assistance in Areas Affected by Disasters

§ 220.2 Financial assistance for providing free public education pursuant to section 7(a) of the Act.

(a) The Secretary will, upon receipt of a complete application under section 7(a) and approval thereof, provide financial assistance, in amounts calculated pursuant to section 7(a) and § 220.2(c).

(1) In the case of a major disaster, such assistance shall commence with the fiscal year in which the determination is published in the FEDERAL REGISTER that the local educational agency suffered a major disaster or with the fiscal year in which the disaster-causing incident in the local educational agency terminated, whichever is later.

(2) In the case of a pinpoint disaster, such assistance shall commence with the fiscal year in which the Secretary makes a determination that the local educational agency has suffered a pinpoint disaster or with the fiscal year in which the disaster-causing incident in the local educational agency terminated, whichever is later.

(b) Such assistance may be continued for as many as four additional consecutive fiscal years after the fiscal year of commencement, as described in the preceding paragraph, on the basis of complete applications approved during each fiscal year for which assistance is to be paid. Thus, there is a maximum of five fiscal years for which assistance may be paid under section 7(a) with respect to a particular disaster. The amount of such Federal financial assistance for providing free public education at a preexisting level shall not exceed 75 percent during the third of such fiscal years, 50 percent during the fourth and 25 percent during the fifth, of the amount of assistance paid under section 7(a) for the second fiscal year of such five-year period.

(c) The amount of financial assistance so provided by the Secretary to the agency for use during any fiscal year will not exceed the amount which the Secretary determines to be necessary to enable such an agency, with the other funds available to it for such a purpose, to provide a level of education equivalent to:

(1) That maintained in the schools of such agency prior to the occurrence of such disaster, taking into account, in the case of a major disaster, the additional costs reasonably necessary to carry out section 7(a)(4) of the Act, or (2) that are required to meet the budgeted or actual current operating expenditures, whichever is lesser.

(d) The amount of unobligated cash carryover for current operating expenditures to the fiscal year of the disaster (from the fiscal year prior to the disaster) will not be considered to be revenue available unless such carryover exceeds ten percent of the amount budgeted for current operating expenditures in the fiscal year of the disaster. When a carryover balance does not exist or a deficit balance exists, the creation of a carryover balance in subsequent fiscal years will not be considered a cost for purposes of determining Federal assistance under section 7(a).

(20 U.S.C. 241-1(a))

§ 220.3 Assistance for the replacement of supplies, equipment, and materials for minor repairs and for the leasing of facilities pursuant to section 7(b) of the Act.

(a) The Secretary will provide an amount of assistance which the Secretary determines, on the basis of a complete application filed for assistance under section 7(b) of the Act to a local educational agency which is eligible for assistance pursuant to section 7(a) of the Act (following the inspection by the disaster review team and the issuance of a provisional authorization), is necessary for one or more of the following activities:

(1) To replace instructional and maintenance supplies, equipment and materials (including textbooks), whether or not acquired through the use in whole or in part of Federal funds made available under other programs, which have been destroyed or seriously damaged as a result of a disaster and which will not be replaced by other Federal programs.

(2) To make minor repairs (as defined to § 220.1(j)), or

(3) To lease or otherwise provide (other than by the acquisition of land or the erection of buildings) school and cafeteria facilities needed to replace temporarily such facilities which have been made unavailable as a result of the disaster. Such lease or provision may not include gymnasiums and similar facilities intended primarily for exhibitions for which admission is charged to the general public or which have (i) outdoor seating in excess of the total number of pupils enrolled in the school of the system, (ii) ticket booths or stands, and (iii) lighting stands, fixtures, etc., for nighttime events.

(4) If assistance is requested for activities under paragraph (a) (1), (2), or (3) of this section in connection with gymnasiums and similar facilities, data must be submitted to substantiate that such gymnasiums and similar facilities are not intended primarily for exhibitions for which admission is to be charged to the general public.

(b) Amounts necessary for activities described under § 220.3(a) may include reasonable expenditures for:

(1) *Preventive work.* If an applicant incurs expenditures in order to prevent disaster damage (such as expenditures to keep drains clean, build dikes to divert water from washing out playgrounds), assistance may be authorized if (i) the work is done immediately before and in anticipation of the disaster, or during the disaster, (ii) the work is done on or immediately adjacent to the school site, and (iii) the work is restricted to that which the Secretary determines could reasonably have been expected to prevent further disaster damage.

(2) *Use of applicant-owned equipment.* When an applicant owns heavy equipment which is suitable to repair disaster damage (including debris removal, and site redevelopment) and uses such equipment to make necessary repairs, assistance may be authorized for the cost of the use of its equipment to repair eligible disaster damage at the pre-disaster rental rate for similar equipment in the area. Applications for reimbursement for the use of such applicant-owned equipment to repair eligible disaster damage

must be supported by documentation for each piece of equipment including:

(i) Type and description of equipment;

(ii) Number of hours used each specific day;

(iii) Total hours used;

(iv) Description of location and work on which equipment was used; and

(v) Data substantiating pre-disaster rental rate for similar equipment in the same area.

(3) *Payment for work performed by applicant's maintenance employees.* When an applicant uses maintenance employees during their regularly scheduled work hours for the repair of disaster caused damage, or to take action designed to prevent more extensive damage, assistance may be authorized for such work for the time during which the employees would otherwise have worked at regularly scheduled school maintenance work had there been no disaster. Additional assistance may also be authorized for overtime payments to such overtime employees for the maintenance, repair, or arrest of disaster-caused damages. All assistance for payment of applicant's employees will be based on the prior policy and practice of the applicant, including wage rates, in the payment of such employees.

(4) *Utilities.* Assistance may be authorized for the cost of utilities in temporary or leased facilities, including the necessary installation costs.

(5) *Replacement of equipment.* Assistance may be authorized at the fair market value for the repair or replacement of equipment (including vehicles such as automobiles, trucks and tractors). Assistance may be authorized for replacing, rather than repairing nontubular furniture of metal construction which has been submerged in salt water and for replacing rather than repairing furniture of tubular construction which has been submerged in fresh water. However, assistance for replacement costs of disaster damaged equipment which an applicant has obtained as surplus property and which was selected and procured on a basis other than its being essential to school operation will be based upon the out-of-pocket cost to the applicant at the time of acquisition. The amount of Federal disaster assistance with reference to the repair or replacement of seriously damaged or destroyed school buses used in the daily transportation of pupils shall be determined after examination of the State transportation assistance program to establish the amount, if any, of such State assistance attributable to those buses which were seriously damaged or destroyed. Federal aid shall be limited to the actual cost of repair or replacement of those buses seriously damaged or destroyed less such State transportation assistance, insurance proceeds, and salvage or trade-in value payable on such school buses.

(6) *Off-site work.* Assistance may be authorized for emergency provision of off-site repairs to permit access to school facilities when consistent with State law, provided that such work may not be done legally or expeditiously by another local governmental unit.

(7) *Trees, shrubs and seeding.* When trees and shrubbery have been lost or have been so badly damaged as to require replacement, assistance may be authorized for their replacement with trees and shrubs of like type, but not to exceed the cost of the size customarily used for new plantings on the sites of newly constructed school facilities within the State.

(8) *Architectural and engineering fees.* Assistance for architectural and engineering fees which are related to authorized minor repairs or replacements may be authorized. The amount of such reimbursement shall not exceed the usual rate applicable in the State for similar work.

(9) *Damage of school facilities during replacement.* If a school facility suffers disaster damage while under construction or renovation, assistance may be authorized only to the extent that the applicant satisfies the Secretary that insurance proceeds are not available for the necessary repair or replacement. However, if the applicant was in the process of taking formal action at the time of the disaster to replace temporary, or obsolete school facilities with other facilities, no assistance will be authorized for the temporary or obsolete facilities.

(10) *Damages to school facilities during disaster recovery.* Assistance may be authorized for minor repairs of school facilities (including paving and turf) which must be damaged in order to reestablish school operations. However, assistance will not be authorized to compensate for the use of such school facilities in an activity for which the school authorities are not responsible (including their use as a refugee center, for quartering the National Guard, or for a National Guard motor or equipment pool).

(11) *Administrative expenses.* Assistance may be authorized for expenses identified as overtime payments to regular applicant employees or for pay to extra clerical help hired specifically to:

(i) Develop and maintain data to substantiate and support disaster repair, replacement and related expenses, or (ii) to maintain adequate and efficient records concerning the use of disaster assistance. Assistance will not be authorized for salaries, wages, and expenses of regularly employed administrative personnel who are engaged, during regularly scheduled school hours, in disaster recovery work or work necessary to develop a determination of the extent of disaster damages or to complete and file disaster applications.

(12) *Temporary facilities.* (i) Assistance may be authorized to lease or otherwise provide (other than by acquisition of land or erection of facilities) school and cafeteria facilities needed to replace temporarily such facilities which have been made unavailable as a result of a disaster when the applicant assures the Secretary that existing available school facilities within the district cannot reasonably accommodate pupils left unhoused by the disaster.

(ii) If appropriate private or public structures are available to the applicant, they may be leased for the period of time necessary to restore or replace permanent school facilities. Modifications and improvements necessary to permit such structures to accommodate an educational program should be performed by the owner of the facilities, and the resultant costs may be included in the basic monthly or annual fee for leasing the facilities. Furthermore, any expenses required at the end of the lease period to convert back to noneducational uses should be anticipated and may be included in the leasing fee. In the event that sufficient temporary instructional space may not reasonably be available in existing school facilities or in other public or private structures to accommodate, temporarily, all unhoused pupils, the local education agency may arrange to lease or purchase, whichever cost is the lesser, temporary portable school facilties. Temporary portable facilities may be leased for the period of time that it takes to replace or restore the destroyed facilities, provided that replacement or restoration is pursued with reasonable expendiency. It will be the responsibility of the local educational agency to ascertain that such temporary facilities are used in accordance with State and local building laws and policies which may affect such temporary facilities.

(iii) Funds may be provided to local educational agencies to purchase temporary facilities when purchasing is financially advantageous to the United States. The local educational agency is required to agree to advertise and sell, in accordance with State or local policies and procedures, the temporary facilities after the damaged facilities have been restored or replaced. The proceeds of the sale are to be remitted to the Department.

(13) *Equipment for temporary facilities.* If temporary facilities are provided to a local education agency, or if permanent facilities are provided pursuant to section 16 of Pub. L. 81-815, assistance may be authorized for that equipment necessary for the operation of temporary facilities. To the extent practicable, such equipment must be utilized in those permanent facilities provided pursuant to section 16 of Pub. L. 81-815, or those facilities undergoing minor repair under section 7(b) of the Act, when the use of the temporary facilities provided under section 7 of the Act is no longer necessary. Such equipment may be provided only if prior approval of the Secretary is obtained. Notification of such ap-

proval will be attached to the notice of preapplication review action.

(14) *Insurance on relocatable classroom units.* The owner or lessor of relocatable classroom units shall be responsible for maintaining fire and extended coverage insurance on such relocatable units at its cost for the full insurable value thereof. The lessor should include such expense within his bid quotation, if necessary. If temporary units are purchased rather than leased, the applicant must maintain fire and extended coverage to replace any temporary units in the event that they are destroyed by fire or other catastrophe. Assistance will be authorized for such insurance.

(20 U.S.C. 241-1 (a)-(b))

§ 220.4 Special procedures for obtaining pinpoint disaster assistance.

Upon the occurrence of a pinpoint disaster, the local educational agency desiring Federal assistance shall request the Governor of the State, through the State educational agency, to present to the Secretary a request for Federal assistance. The Governor's request shall contain:

(a) A certification of the need for disaster assistance and assurance of the expenditure of a reasonable amount of the funds of the government of such State or any political subdivision thereof, in addition to any insurance proceeds and the interest earned thereon, for purposes of providing free public education and to repair school facilities damaged by such disaster, which shall include:

(1) A statement of the amount of State and local funds available or to be made available to provide free public education or to repair such damaged school facilities;

(2) An estimate of the amount of Federal assistance needed;

(b) A statement of the date and cause of the disaster as a result of which public elementary or secondary school facilities of the local educational agency have been destroyed or seriously damaged, including a certification by the Governor that the disaster was not caused by negligence or malicious action.

(c) An estimate of the extent of damage resulting from the disaster;

(d) A certification by the Governor that the applicant maintained, at the time of the disaster, insurance coverage on the school facilities, instructional, and maintenance supplies, equipment, and materials (including textbooks), with respect to which assistance is sought under section 7(b) of the Act, in an amount equal to the full valuation of the same.

(e) A statement from the State Attorney General that under State law local educational agencies have the authority to enter into an agreement with the Federal government for acceptance of a repayable advance as described under this part.

(20 U.S.C. 646 (a), (c))

Subpart C—Applications

§ 220.8 Applications.

Prior to receiving benefits under section 7 of the Act, a local educational agency located in whole or in part in a major disaster area, or which has suffered a pinpoint disaster, must file with the Secretary a complete application for financial assistance on forms prescribed by the Secretary setting forth the need for such benefits under each pertinent subsection of the Act.

(a) An approved application for financial assistance under section 7(a) of the Act shall apply only to such financial assistance for providing free public education until the end of the fiscal year in which the application is approved. Applications for financial assistance under section 7(a) of the Act for subsequent fiscal years must be filed separately.

(b) An approved application under section 7(b) of the Act shall apply to any expenditures made during a reasonable period of time with respect to those items which are covered by the application. An application that is appropriately made under section 7(b) of the Act will be applicable retroactively for eligible expenditures made immediately prior to, during or subsequent to the incident period of the disaster occasioning the expenditure.

(20 U.S.C. 241-1 (a), (b))

§ 220.9 Dates for filing applications.

(a) An initial application or a notice of intent to file such an application within the fiscal year for financial assistance benefits under section 7(a) must be filed with the Secretary through the appropriate State educational agency as follows:

(1) In the case of a major disaster, on or before 90 days following that date on which the area in which the local educational agency is located, in whole or in part, is designated as being within a major disaster area.

(2) In the case of a pinpoint disaster, an initial application must be filed on or before:

(i) 90 days following the effective date of the regulations in this part pertaining to the type of disaster; or

(ii) 90 days following the date on which the disaster occurred, whichever is later.

(3) Whenever such a date falls on a Saturday, Sunday or Federal holiday, the final day for filing the application shall be the next succeeding business day.

(4) A complete application for financial assistance for benefits under section 7(a) for each fiscal year subsequent to that covered by the initial application must be filed by January 31 in the fiscal year following the last initial application.

(b) A complete application for benefits under section 7(b) of the Act must be filed with the Secretary through the appropriate State educational agency as follows:

(1) In the case of a major disaster, on or before 90 days following that date on which the area in which the local educational agency is located, in whole or in part, is designated as being within a major disaster area.

(2) In the case of a pinpoint disaster, a complete application must be filed on or before:

(i) 90 days following the effective date of the regulations in this part pertaining to such type of disaster; or

(ii) 90 days following the date on which the disaster occurred, whichever is later.

(3) Whenever such a date falls on a Saturday, Sunday, or Federal holiday, the final day for filing the application shall be the next succeeding business day.

(c) The applicant is responsible for obtaining the appropriate certification of the State educational agency and for securing transmittal of the application to the Secretary.

(20 U.S.C. 241-1)

§ 220.10 Notification to applicants.

The Secretary will notify each applicant of the results of the review of its application. A notice of application review action will be sent to the applicant which, in appropriate instances, will describe the estimated amount of any payments to be made with respect to assistance in the cost of providing free public education, including assistance with respect to the making of minor repairs of school facilities, and the cost of replacing destroyed or seriously damaged instructional and maintenance supplies, equipment and materials (including textbooks), and of leasing or otherwise providing school or cafeteria facilities as temporary replacements.

(20 U.S.C. 241-1 (a)-(b))

§ 220.11 Reports.

(a) *Reports required.* Each applicant shall submit required reports and information on such forms as the Secretary may reasonably require concerning (1) destruction of and damage to school facilities and instructional and maintenance supplies, equipment, and materials (including textbooks), (2) payments made with respect thereto, as well as payments made to continue to provide free public education at a preexisting level, and to lease or otherwise provide school and cafeteria facilities as temporary replacements, for which benefits are sought under section 7 of the Act.

(b) *Final reports.* Each applicant whose application is approved shall submit to the Secretary final reports concerning payments made by the applicant for which benefits are sought under section 7. Final reports shall be submitted promptly with respect to section 7 as follows:

(1) Final reports with respect to the assistance under section 7(a), and final

reports with respect to the cost of leasing school and cafeteria facilities as temporary replacements under section 7(b), shall be submitted to the Secretary no later than September 30 following the close of the school year for which the report is made.

(2) Final reports with respect to assistance under section 7(b), except final reports with respect to the cost of leasing school and cafeteria facilities as temporary replacements, shall be submitted to the Secretary after the applicant has made final payment for approved expenditures and has received final insurance adjustments and all other funds, but in no event later than 90 days following the first anniversary date of the disaster, unless the applicant makes written request, showing good cause, for extension of time for submitting such final report and such date is extended in writing by the Secretary.

(c) *Excessive payments.* The Secretary may disallow any portion of the amounts requested which are determined by him not to be necessary for the intended purpose or not to be eligible for benefits under section 7 of the Act. If, after the date for filing a final report, an applicant is found to have received amounts in excess of the amounts to which it is entitled under section 7 of the Act for a given fiscal year, as determined by the Secretary, an amount equal to the excess may be taken into consideration in determining the amounts to be subsequently certified for payment to the applicant for the current or any subsequent fiscal year. Where no subsequent payments are due, the applicant will be required to remit such excess to the Secretary.

(20 U.S.C. 241-1(e))

§ 220.12 Inadequacy of Federal funds.

(a) If appropriated funds are inadequate to pay in full the requests contained in all approvable applications filed within the ninety (90) day filing period, the Secretary will establish an order of priority for the approval of such applications. In determining the order in which such applications will be approved, the Secretary will consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications.

(b) Priority among approvable applications filed, within the 90-day filing period will be determined as follows: A priority will be determined among applications in descending order, by ascertaining the percentage that the total Federal funds for which each applicant is estimated by the Secretary to be eligible under the Act is of the total current operating costs of that applicant as estimated by the Secretary, including the increased costs due to the disaster.

(20 U.S.C. 241-1(d))

§ 220.13 Method of payment.

(a) The Secretary may pay in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, and in such installments as he may determine, the amounts due to a local educational agency pursuant to the provisions of section 7 of the Act.

(20 U.S.C. 241-1(e), 1232d)

(b) In all cases determined pursuant to section 7, if the Secretary finds that funds other than Federal funds will, in the near future, become available to the local educational agency specifically for the purpose of providing assistance in cases of such disasters, then Federal financial assistance may, to the extent that such funds are to become so available, be in the form of a repayable advance subject to repayment, without interest, when available.

(20 U.S.C. 241-1; 20 U.S.C. 242(c))

§ 220.14 Prohibition on payment for religious worship or instruction.

Nothing contained in the Act or in this part shall be construed to authorize the use of any payment made thereunder for religious worship or instruction.

(20 U.S.C. 241-1(a)(4))

Subpart D—General

§ 220.18 Applicability of General Provisions Regulations.

(a) Provisions contained in Parts 100 and 100a of the regulations entitled "General Provisions for Department Programs" are applicable to programs conducted under the Act, with the following exceptions:

(1) Section 100a.26(b) (Criteria for review of applications);

(2) Section 100a.31 (Preapplications);

(3) Subpart L, §§ 100a.209-100a.220 (Property management requirements); and

(4) Section 100a.235 (Other program income).

(b) It should be noted that certain of the provisions in such regulations are not, by their own terms, pertinent to activities which may be conducted pursuant to the Act, such as:

(1) Section 100a.19 (Cooperative arrangements);

(2) Section 100a.44 (Application for Federal assistance) (Construction projects);

(3) Section 100a.41 (Preapplication for Federal assistance);

(4) Section 100a.42 (Notice of preapplication review action);

(5) Section 100a.63 (Payment methods for construction projects);

(6) Section 100a.82 (Institutions of higher education);

(7) Section 100a.83 (Nonprofit organizations);

(8) Subpart H, §§ 100a.90-100a.94 (Matching and Cost Sharing); and

(9) Subpart K, §§ 100a.155-100a.192 (Construction requirements).

§ 220.19 Nondiscrimination against handicapped individuals.

Federal financial assistance is subject to section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112).

(29 U.S.C. 794)

PART 221—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

Subpart A—Definitions

Sec.
221.1 Definitions.

Subpart B—Filing Complete Applications and Determining Priority Indices

221.2 Cutoff dates for filing applications.
221.3 Election where two or more categories under section 5(a) apply.
221.4 Procedure if funds are inadequate to make all payments.
221.5 Determination of priority indices and priority groupings for applications.
221.6 Determination of subpriority indices for applications.
221.7 Priority and approval conditioned upon readiness to proceed with construction.

Subpart C—Policy Determinations in Processing of Applications

221.11 Membership of nonresident pupils.
221.12 Changes in boundaries, classification and governing authority of applicants.
221.14 Estimated average daily membership under section 5(a)(3).
221.15 Determination of undue financial burden.
221.16 Additional payments under section 8.
221.17 School facilities for children whose membership is of temporary duration only.
221.18 Determination of eligibility under section 14.

Subpart D—Criteria for Waivers Under the Act

221.30 Application for waivers.
221.31 Criteria for waiver under section 5(e) of minimum number requirement of 20 in section 5(c).
221.32 Criteria for waiver under section 5(e) of percentage requirements for federally connected and nonfederally connected membership in section 5(c).
221.33 Criteria for waiver under section 5(e) for children residing on Federal property.
221.34 Criteria for waiver under section 5(e) of limitation on number of federally connected children eligible for payment in section 5(f).
221.35 Criteria for waiver of percentage requirement in section 14(a).

Sec.
221.36 Criteria for waiver of substantial percentage requirement in section 14(b).
221.37 Criteria for waiver of substantial percentage requirement in section 14(c).

Subpart E—Certification of Payments

221.41 Certification of payments.
221.42 Certification of payments under section 14.
221.43 Payments.

Subpart F—General Provisions With Regard to Construction of Minimum School Facilities

221.51 Works of art.
221.53 Excellence of architecture and design of minimum school facilities.
221.55 Applicability of General Provisions Regulations.
221.58 Procurement of school facilities.

Subpart G—Sections 9 and 10

221.61 Conditions for assistance under section 10.
221.62 Requests for section 10 school construction.
221.63 Property management: Sections 9 and 10.
221.64 Disposal of federally owned temporary school facilities provided under section 9.
221.65 Transfer of title of federally owned school facilities provided under section 10 to local educational agencies.
APPENDIX A

AUTHORITY: Pub. L. 81-815 (school construction in areas affected by Federal activities), as amended, 64 Stat. 967 (20 U.S.C. 631-645), unless otherwise noted.

SOURCE: 40 FR 16019, Apr. 8, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Definitions

§ 221.1 Definitions.

As used in this part, the term:

(a) *Ability to provide a suitable free public education for the purposes of section 10 of the Act.* The Secretary considers a local educational agency (LEA) able to provide a suitable free public education if the LEA—

(1) Has the authority under State law to provide suitable free public education to pupils residing on Federal property;

(2) Has not refused to provide that education;

(3) Has the authority to provide educational facilities on property it does not own where the LEA determines that the property is necessary to serve pupils residing on Federal property; and

(4) Has the actual or potential financial resources and/or facilities to provide that education.

(20 U.C.S. 640(a)(2))

(a-1) "Act" means Pub. L. 815 (except section 16 thereof), 81st Congress (64 Stat. 967), as amended.

(20 U.S.C. 631-645)

(b) "Applicant" means a local educational agency which has filed a complete application for assistance in school construction under the Act and this part.

(20 U.S.C. 633-635(a))

(c) "Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. An attendance area for elementary school need not necessarily be coterminous with an attendance area for a secondary school.

(20 U.S.C. 635(e), 644)

(d) "Available and usable school facilities" includes:

(1) *Existing school facilities.* Included are all those facilities for which payments have been made under the Act, and all facilities constructed as school buildings and used continuously for classroom purposes. Excluded are basement rooms, hallways, or other space the use of which for school purposes (in view of their character, inaccessibility or other equally cogent reason) seriously prejudices the educational objective, or has impaired or will impair the health or safety of the school children. Also excluded are facilities which have been abandoned or must be abandoned by the end of the second year following the increase period for which the application is filed. These requirements also apply to buildings owned by other Federal agencies which are available for the education of children counted by applicants under section 14 of the Act.

(2) *Facilities under contract.* Included are all those facilities, including those for which funds have been reserved or approved under the Act, for which construction contracts have been let on or before the contracts-let date. After such date, only that portion of such facilities to be financed with funds reserved or approved under the Act is included.

(3) *Potential facilities.* With respect to sections 8, 14(a) and 14(c) of the Act, all those minimum school facilities which, with full utilization of all practicably available financial resources, could be provided from local, State, or Federal sources (other than the Act), will be considered as available and usable. Such utilization by the applicant is a condition precedent to Federal assistance under the Act. The estimated capacity of such facilities shall be equal to the total amount of all such resources divided by the most current estimated cost per pupil for providing minimum school facilities in the State. In determining, for purposes of this subparagraph, whether financial resources are practicably available, the amount representing the unused bonding limit in the State but not in excess of 12 percent of its assessed valuation will be considered to be a financial resource practicably available.

(4) *Portable classrooms.* Included are temporary, relocatable, demountable, mobile, trailer, or other such units, but only if:

(i) They have been purchased with funds paid under the Act; or

(ii) The State educational agency by law, regulation, or policy, requires such facilities to be counted as permanent capacity units in the computation of State construction aid.

(20 U.S.C. 634, 640, 644(c), 645(10))

(e) "Average daily membership" (hereinafter referred to as ADM) for any school in any school year means average daily membership as determined in accordance with State law or, in the absence of State law governing such a determination, such term means the aggregate of the sums of the days of membership of each child in the school divided by the number of days school was in session. Only days on which pupils were under the guidance and direction of teachers in the teaching process will be considered to be days in session. The ADM for a group of schools having varying lengths of terms is the sum of the ADM obtained for the individual schools divided by the number of schools in such group.

(20 U.S.C. 635 (a), (c), (d), 645(5))

(f) "Average daily membership of federally connected pupils" in each category of federally connected children (as described by clauses (1), (2), and (3) of section 5(a) of the Act) is the number of such children determined in the following manner: on a day not earlier than the fourth day of legal school session of the regular school year and prior to the cutoff date for filing the preapplication, a membership survey of all pupils claimed in each category of federally connected children must be made by either (1) conducting a parent-pupil survey to determine the child's residence on Federal property and the parent's employment, or active duty assignment in the uniformed services, or (2) obtaining certifications from the various employers or the appropriate housing officials as to the employment of the parents of the children claimed or the residence of such children on such day. A membership survey of all pupils must also be made as of such day and such survey shall be the official membership report of the applicant local educational agency for such day. The membership survey used must be conducted in either the third or fourth year of the 4-year increase period. If application is made under section 5(a)(3) of the Act, the survey date must be within 3 months of the date the membership survey is initiated.

(20 U.S.C. 635, 644, 645 (1), (5))

(g) "Base year" means the third or fourth school year preceding the fiscal year in which an application is filed, as may be designated in the application, except that in the case of an application based on children referred to in paragraph (2) or paragraph (3) of section 5(a) of the Act, the base year shall in no event be later than the regular school year 1973-74. Thus such term refers to the year preceding the 4-year increase period for which an application is filed.

(20 U.S.C. 645(15))

(h) "Classrooms" means (1) regular classrooms, including recitation, lecture, and general purpose rooms; and (2) special classrooms, including kindergarten rooms, science laboratories, shops, music, art and visual education, business education, and homemaking rooms.

(20 U.S.C. 645(9))

(i) "Complete application," except for applications under section 10 of the Act, means a preapplication (Exhibit M-1 of FMC 74-7), an application (Exhibit M-4 of FMC 74-7), and such supplemental information as may be requested by the Secretary, all of which have been appropriately filed.

(20 U.S.C. 636(a); FMC 74-7)

(j) "Contracts-let date" means the date on which the Secretary's notice setting the cutoff date for the receipt of applications for a fiscal year is filed with the Office of the Federal Register.

(20 U.S.C. 634)

(k) "Filed" means that all necessary parts of the preapplication or the complete application, as appropriate (bearing the required certifications and verifications by the State educational agency), are received by the Secretary on or before the applicable cutoff date.

(20 U.S.C. 636(a), 636(b)(2)(B), 644(e))

(l) "Initial equipment" means any movable equipment necessary and appropriate to equip minimum school facilities. Such term does not include equipment purchased to replace any equipment which is obsolete or worn out and which was purchased with funds under the Act. Initial equipment to be procured with funds under the Act must be approved in advance in accordance with the provisions of § 221.58.

(20 U.S.C. 645 (9), (10))

(m) "Local educational agency" means a local educational agency as defined by section 15(11) of the Act. If the responsibility for providing school facilities for a local educational agency is vested in a State agency, the term includes such State agency together with such local educational agency.

(20 U.S.C. 645(11))

(n) "Member" of a class shall be determined, where appropriate, in accordance with the provisions of section 15(5) of the Act. In the absence of State law, or regulation, a member is a child who is on the current roll of the school. Such a child shall be considered a member from the date of enrollment until he permanently leaves the class or school for one of the causes recognized as sufficient by the State. The date of permanent withdrawal shall be the date on which it is officially known that the pupil has left school, and not necessarily the first day after the date of last attendance.

(20 U.S.C. 645(5))

(o) "Membership of children of temporary duration only" means the school membership of children whose residence in the school district of the local educational agency the Secretary determines will probably be for more than one year and for less than 6 years beyond the date of the approval of the complete application and whose number is excluded from computation of maximum payments under section 5 of the Act.

(20 U.S.C. 635, 639)

(p) "Minimum school facilities" means classrooms and auxiliary rooms and initial equipment necessary to operate a program of free public education for the membership of the applicant at normal capacity in accordance with the laws and customs of the State.

(1) Such term does not include athletic stadiums, or structures, or facilities intended primarily for athletic exhibitions, contests, or games, or other events for which admission is to be charged to the general public.

(2) Except as used in sections 9 and 10 of the Act, such term does not include interests in land or off-site improvements.

(3) Such term includes:

(i) An auditorium or a gymnasium only if the Secretary determines that such a structure is justified by the size of the school's enrollment, the educational program to be conducted by the school, and the standards and practices in the State. Such a structure may provide fixed or moveable seating only for the normal capacity of the school; and

(ii) Air conditioning in all States which are, in whole or in part, south of the 39° parallel if an authorized representative of the State educational agency certifies to the Secretary that air conditioned school facilities are currently being constructed with State and local funds within such State. Such term includes air conditioning in all other States only if such certification is accompanied by the results of a survey which shows that air conditioning is provided in a majority of recently constructed school facilities within the State.

(iii) In appropriate situations, particularly under section 14 of the Act, the construction of consolidated school facilities (in cases of consolidation of small districts) or the replacement of small, isolated, inadequate, buildings with modern facilities, even though there may otherwise be enough classroom space to house all the children.

(iv) Dual-use fallout shelter space which is provided as a regular safety feature. If the spaces within the buildings prove to provide shelter from fallout at little or no additional cost, they may also be considered as minimum school facilities.

(20 U.S.C. 645 (9), (10); Senate Report No. 90-726, November 6, 1967, 41)

(q) "Normal capacity" of a school room is the number of pupil stations which the room accommodates under ordinary conditions in accordance with the laws and customs of the State governing free public education.

(20 U.S.C. 634, 640, 644(c))

(r) "Parent-pupil survey" means a questionnaire which is provided by the applicant and filled out by a parent in order to substantiate residence or employment on Federal property. Such survey must include:

(1) Pupil-enrollment information (which may be obtained from school records), including:

(i) Name of pupil;

(ii) Date of birth; and

(iii) Name of public school, grade, and teachers; and

(2) Pupil-residence and parent-employment information including:

(i) Address of pupil residence (including the name of the Federal facility if such address is located on Federal property);

(ii) Name (as it appears on employer's payroll record) of parent (mother, father, legal guardian or other person standing in loco parentis) who is employed on Federal property and with whom such pupil resides, unless the parent is a member of the uniformed services on active duty;

(iii) Name and address of Federal property on which the parent is employed unless the parent is a member of the uniformed services on active duty;

(iv) If the parent is a member of the uniformed services on active duty, the name, the rank, serial number, and branch of service of such parent;

(v) If the parent is a civilian employed on a Federal vessel, the name of vessel, hull number, and name of controlling agency must be obtained;

(vi) Signature of the parent supplying the information and the date of the signature must be obtained; and

(vii) The name and address of employer (unless the parent is a member of uniformed services on active duty).

(3) Only in unusual circumstances may partially completed survey forms or forms which are signed by a person other than parent, or person standing in loco parentis, be accepted. In such circumstances the form must show why the parent did not sign, and when, how, and from whom the residence and employment information was obtained.

(20 U.S.C. 634, 635(a))

(s) "Preapplication" means both Exhibit M-1, of FMC 74-7 and such supplemental information as may be requested by the Secretary.

(20 U.S.C. 636(a); FMC 74-7)

(t) "Priority indices" means the indices established pursuant to this part based on relative urgency of need for the purpose of determining the order of approval of project applications, and the order of payments within each priority grouping.

(20 U.S.C. 633)

(u) "Remote or isolated areas" means attendance areas or local educational agencies or portions thereof designated as such by the Secretary for the purposes of waivers under sections 5(e) and 14 of the Act (see Subpart D of this part). Such designation will be based upon the following factors:

(1) Topography;

(2) Geographic isolation;

(3) Traffic conditions;

(4) Climatic conditions; and

(5) Other similar conditions which make it impracticable to transport students to other school facilities of the applicant or to any adjacent local educational agency.

(20 U.S.C. 635(e), 644)

(v) "Repairs" means, for the purpose of applications under section 10 of the Act, only those repairs which must be accomplished without delay in order to avoid further deterioration of the school facilities or to protect the safety of individuals occupying the facility. Such term does not for that purpose include the remodeling or rearrangement of existing facilities to permit grade pattern reorganization or the providing of minimum school facilities.

(20 U.S.C. 635, 640(a))

(w) "Subpriority indices" means the indices established pursuant to § 221.6 for the purpose of determining the order of approval of project applications having identical priority indices, when appropriated funds are insufficient to fund all such project applications.

(20 U.S.C. 633, 634, 644(e))

(w-1) Free public education is considered "suitable" for purposes of section 10 of the Act if—

(1) The primary language of instruction is English; and

(2) The school facility which a pupil attends or would attend is within the State's established maximum commuting distance from a pupil's home; and

(3) The programs of instruction offered or which can be offered with combined local, State, and Federal resources meet standards for State accreditation or approval. If the particular State has not established standards for accreditation or approval, the Secretary applies appropriate accreditation associations' standards to assess suitability of the LEA's program of instruction; or

(4) In the judgment of the Secretary, an arrangement under section 10 would operate, because of adverse social and political factors, to the serious detriment of the children to be served.

(20 U.S.C. 640(a)(2))

(x) "Total square feet of floor area" means the sum of the square feet of each usable floor (including partitions and exterior walls) within the perimeter of outside walls at the respective floor levels. Covered passageways with one or more sides open are deemed to have one-half the square feet of floor area they would otherwise have.

(20 U.S.C. 645(6))

(y) "Unhoused" pupils or "inadequately housed" pupils means:

(1) For the purpose of determining priority, the difference between the total estimated membership as of the end of the increase period and the total normal capacity of available and usable school facilities; or

(2) For the purpose of determining the need for minimum school facilities, the difference between the total estimated membership as of the end of the second year following the end of the increase period and the total normal capacity of available and usable school facilities.

(20 U.S.C. 634, 640, 644(c), 645(10))

(z) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Science Services Administration, and Public Health Service.

(20 U.S.C. 635(a)(1)(B))

[40 FR 16019, Apr. 8, 1975, as amended at 44 FR 43439, July 24, 1979. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Filing Complete Applications and Determining Priority Indices

§ 221.2 Cutoff dates for filing applications.

The Secretary will, by notices published in the FEDERAL REGISTER, set cutoff dates for the filing of applications under this part for each fiscal year.

(20 U.S.C. 633, 636(a), 640(a), 644(e))

§ 221.3 Election where two or more categories under section 5(a) apply.

A district may combine children described in sections 5(a)(1) and 5(a)(2) of the Act to meet the percentage-increase requirements for eligibility purposes. If eligibility requirements are met by such combination, the maximum Federal payment will be computed on the basis of the number of children described in each section at the respective rates of payment specified therefor. However, if children eligible to be counted under section 5(a)(1) or 5(a)(2) of the Act are counted under section 5(a)(3) to meet eligibility requirements for that section, the maximum Federal payment will be computed on the basis of the number of children counted under section 5(a)(3) at the rate of payment specified for that section.

(20 U.S.C. 635)

§ 221.4 Procedure if funds are inadequate to make all payments.

(a) Section 2 of the Act provides that for each fiscal year the Secretary is to determine the portion of the funds appropriated under the Act which will be available for carrying out the provisions of sections 9 and 10 and that the remainder of such funds shall be available for paying to local educational agencies the Federal share of the cost of projects for the construction of school facilities for which applications have been approved under section 6. Section 3 of the Act provides that the Secretary shall by regulation prescribe an order of priority, based on relative urgency of need, to be followed in approving applications in the event the funds appropriated under the Act and remaining available on any cutoff date for payment to local educational agencies are less than the Federal share of the cost of the projects with respect to which applications have been filed prior to such date (and for which funds under the Act have not already been obligated). Only applications meeting the conditions for approval under the Act (other than section 6(b)(2)(C)) will be considered applications for purposes of the preceding sentence. Such an order of priority is to provide that applications for payments based upon increases in the number of children either residing on, or residing with a parent employed on, property which is part of a low-rent housing project assisted under the United States Housing Act of 1937, as amended, will not be approved for any fiscal year until all other applications under paragraphs (2) and (3) of section 5(a) have been approved for that fiscal year. Section 14(e) of the Act provides, in part, that in determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications and the nature and extent of the Federal responsibility. Section 14(h) provides that it is the policy of the Congress that the provision of assistance pursuant to sections 14(a) and 14(b) of the Act shall be given a priority at least equal to that given to payments made pursuant to section 10 of the Act.

(20 U.S.C. 632, 635(c)(2), 636(b)(2)(C), 639, 640, 644)

(b) Pursuant to the above provisions of the Act, applications for assistance under the provisions of sections 9, 10, 16, 14(a), and 14(b) will have priority funding over applications under section 6 (as limited by section 5), and sections 8 and 14(c) of the Act. That portion of payments for applications filed in accordance with the provisions of section 6 (as limited by section 5) and section 8 of the Act based upon increases in the number of children either residing on, or residing with a parent employed on, Federal property (other than property which is part of an eligible low-rent housing property) will have priority in funding over that portion of payments that is based upon increase in the number of children countable for payment under sections 5(a)(2) and 5(a)(3) who either reside on, or reside with a parent employed on, an eligible low-rent housing property.

(20 U.S.C. 635, 636, 638, 639, 640, 644, 646)

(c) For each fiscal year, the Secretary will first determine the estimated requirements for all applications filed under sections 9, 10, and 16 and sections 14(a) and 14(b) of the Act. Funds available therefor will be allocated first to applications under section 16 of the Act. The remainder of such funds will be allocated to section 14(a), and 14(b) to section 9, and to section 10, in the ratio of the estimated requirements under each section to the total requirements for all such sections.

(20 U.S.C. 632, 639, 640, 644, 646)

(d) Each approvable application under sections 9, 10, 14(a), and 14(b) of the Act will be assigned a priority rating determined in the manner specified in this section and in § 221.5, and a priority listing will be established for each such section. The funds allocated as prescribed in paragraph (c) of this section will be reserved for applications on such priority listing in order of priority indices. When all such applications have been funded, any remaining available funds will be reserved for applications under section 6 (as limited by section 5), section 8 and section 14(c).

(20 U.S.C. 635, 636, 638, 644)

(e) For each fiscal year, a priority listing also will be established for applications under sections 6 (as limited by section 5) and 8 of the Act for that portion of payments which is based on increases in the number of children either residing on, or residing with a parent employed on, an eligible low-rent housing property. Funds will be reserved for applications on such a priority listing after funds have been reserved for all other approvable applications under section 6 (as limited by section 5), section 8, and section 14(c), filed for that fiscal year.

(20 U.S.C. 633, 634, 635, 636, 637, 638, 644)

§ 221.5 Determination of priority indices and priority groupings for applications.

(a) For applications under sections 6 and 14 of the Act, a priority index will be determined for the first pending requested construction project of each applicant by adding (1) the percentage that the estimated number of federally connected children countable for payment in the local educational agency (or, except under section 14(a) and 14(b), in the approved attendance area) is of the total estimated membership of all children therein at the close of the applicable period; and (2) the percentage of the estimated school membership within the local educational agency (or in the approved attendance area) which at the same time is without minimum school facilities. However, in no case shall the amount used in determining the priority index exceed twice the percentage obtained in paragraph (a)(1) of this section. No priority, except under sections 14(a) and 14(b), shall be established for any applicant having less than 20 unhoused children in the local educational agency (or in the approved attendance area).

(20 U.S.C. 633)

(b) For requests under section 10 of the Act, a priority index will be determined for the first pending requested project of each applicant by adding—

(1) The percentage that the estimated number of children for whom minimum school facilities are to be provided is of the total estimated number of all children residing and attending school on the installation at the close of the applicable period; and

(2) The percentage of the estimated school membership at such installation which is without minimum school facilities as of the same time.

However, in no case will the combined percentage used in determining the priority index exceed twice the percentage arrived at in paragraph (b)(1) of this section. In determining the order of priority for approving applications under section 10, applications will be classified in priority groups for funding from funds allocated for applications under section 10 as prescribed in paragraph (c) of § 221.4. A priority listing will be established for each such group in the following order:

(i) Applications requesting major repairs necessary for the safety of school children or to prevent further deterioration of existing school facilities;

(ii) Applications in cases where upgrading or new construction or both is necessary to meet life safety and handicapped access standards;

(iii) Applications in cases where the LEA which operates the school program in school facilities located on Federal property has given assurance and a firm commitment to the Secretary that, upon completion of the proposed project, it will accept ownership of such school facilities under section 10(b) of the Act;

(iv) Applications in cases where there are unhoused pupils; and

(v) Applications requesting the construction of capacity or noncapacity school facilities, or the rehabilitation or remodeling of existing school facilities which is required to bring the school facilities up to a standard which will permit the offering of a contemporary educational program.

(20 U.S.C. 640)

(c) In those cases in which an applicant has filed more than one project application (or in the case of section 10, when two or more applications are filed which fall within the same priority grouping, as established in paragraph (b) of this section), the priority index for the second project will be determined by:

(1) Dividing the normal capacity of first project by the total estimated membership at the close of the applicable period and (2) reducing the applicant's priority index by twice the percentage so obtained. When more than two project applications have been filed, the priority index for each succeeding project shall be reduced by the cumulative total percentage, in the manner provided for in the preceding sentence, of all approved projects of the applicant.

(20 U.S.C. 633, 640, 644)

[40 FR 16019, Apr. 8, 1975, as amended at 44 FR 43440, July 24, 1979. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 221.6 Determination of subpriority indices for applications.

(a) In the event that the funds available are sufficient to cover only a portion of the project applications with identical priority indices (as determined under § 221.5), a subpriority index for each project application will be determined by dividing (1) the estimated number of federally connected children countable for payment in the local educational agency (or in the approved attendance area) or, in the case of section 10 of the Act, the number of children for whom school facilities are to be provided on Federal property by (2) the total estimated membership of all children in such an area at the close of the applicable period.

(20 U.S.C. 633, 634, 640, 644)

(b) In those cases where an applicant has more than one eligible project application in an identical priority index group, the subpriority index of the first project in such group will be computed in accordance with paragraph (a) of this section, and the subpriority index of the second priority will be determined by (1) dividing the normal capacity of the first project by the total estimated membership at the close of the applicable period and (2) reducing the applicant's subpriority index as determined in paragraph (a) of this section by twice the percentage so obtained. The subpriority index for each succeeding project will be reduced by the cumulative total capacity, as provided in the first sentence of this paragraph, of all the approved projects of the applicant.

(20 U.S.C. 633, 634, 640, 644)

§ 221.7 Priority and approval conditioned upon readiness to proceed with construction.

Initial approval of a project application under this part will be cancelled if the applicant is not ready to proceed with construction within 120 days after the date of initial approval unless such period is extended by the Secretary for good cause shown. The applicant's project and entitlement may be subordinated by reason of such failures to other project applications of lower rank or the applicant may forfeit its priority in the discretion of the Secretary.

(20 U.S.C. 633, 634, 636(b)(1)(D), 644)

Subpart C—Policy Determinations in Processing of Applications

§ 221.11 Membership of nonresident pupils.

For purposes of sections 5, 8, 9, and 14 of the Act and the regulations in this part, in determining an applicant's membership, a nonresident pupil who attends a school in the applicant local educational agency on a tuition or nontuition basis may be counted in the applicant's membership if a written agreement for such attendance has been entered into between the local educational agencies concerned, and if that agreement has been approved by the Secretary. No such agreement will be approved by the Secretary unless it provides for education on either a tuition or nontuition basis for a period of 20 years from the date of execution of such agreement.

(20 U.S.C. 645(5))

§ 221.12 Changes in boundaries, classification and governing authority of applicants.

(a) If the applicant is a party to any merger, consolidation, or other similar action which may affect its boundaries, identity, governing authority, classification or control, it shall notify the Secretary as soon as practicable of the effective date of that action, the extent and character thereof, and the legal authority under which the action was or is to be effected.

(b) A local educational agency succeeding to the territory of one or more local educational agencies whose applications were approved (or in due course would have been approved) prior to the change in boundaries or organization may secure all the rights and benefits which were vested in such application(s) by notifying the Secretary and by submitting the following:

(1) A letter from the authorized representative of the successor local educational agency (i) requesting that the successor local educational agency be substituted for the original applicant agencies, and (ii) stating that the successor local educational agency agrees to be bound by the obligations and assurances undertaken or made by such original applicant local educational agencies in their applications to the same extent as such original applicants would have been bound;

(2) An opinion of the appropriate legal officer of the County or State showing that (i) the change in boundaries or organization was accomplished in accordance with the laws of the State; and (ii) that the assignment and acceptance or the transfer of the interest of the applicant local educational agency to the successor local educational agency is in accordance with the laws of the State and is effective to accomplish the changes described; and

(3) Assignments, citations or quotations as follows:

(i) If the State law provides for the settlement of the assets and liabilities (including such matters as right to successorship in property, debts, obligations, unfulfilled contracts, details of the assumption of bonded indebtedness, State aid and taxes) the appropriate quotations from or citations to specific State laws involved should be submitted; or

(ii) If the State law does not clearly provide for the disposition of such property rights, an assignment from each of the former local educational agencies to the successor agencies should be submitted showing (*a*) the transfer of ownership of the building or buildings under construction or contract, (*b*) the transfer of any unexpended funds or rights to funds for the approved projects then on hand, and (*c*) the transfer of all rights and obligations of the applicant local educational agencies in and to any project application not yet approved and any future payments or benefits which might accrue under the pending applications.

(c) The rights and benefits under the Act of the successor agency cannot be greater than the total of all rights and benefits which originally were vested in the component agencies which had valid applications on file to the effective date of the change in boundaries or organization.

(20 U.S.C. 645(11))

§ 221.14 Estimated average daily membership under section 5(a)(3).

For the purpose of eligibility and entitlement under section 5(a)(3) of the Act, the estimated number of children in average daily membership during the year shall be 97 percent of the difference between (1) the total number of children in membership whose parents are employed (as determined by a parent-pupil survey made as of any specific date during the increase period) in establishments with respect to which a responsible official thereof certifies that there has been an increase in employment subsequent to the base year in order to fulfill Federal contracts or subcontracts, and (2) the number of such children whose parents moved into the applicant school district subsequent to such a base year.

(20 U.S.C. 635 (a) (3), (d)(2)(B))

§ 221.15 Determination of undue financial burden.

A determination under section 5(c) of the Act of undue financial burden on the taxing and borrowing authority of an applicant will be made as follows:

(a) If the cost of providing minimum school facilities for the increase in eligible federally connected children under section 5(a)(3) of the Act plus the outstanding bonded debt for building purposes, would result in the necessity of incurring a percentage obligation against assessed valuation in building bonds or other debentures which exceeds the average percentage of such indebtedness incurred for such obligations by school districts in the applicant's State, an undue financial burden is deemed to exist;

(b) In marginal cases, additional consideration may be given to such factors as (1) dollars per child in assessed valuation, (2) increase in total assessed valuation in relation to increase in membership during the increase period, (3) ratio of assessed valuation to true value, and (4) special State laws or practices.

(20 U.S.C. 635(c))

§ 221.16 Additional payments under section 8.

(a) An amount not to exceed 10 percent of any amount appropriated under the Act (exclusive of any sums appropriated for administration) may be reserved and used by the Secretary to make grants to applicants (except to applicants under section 14 of the Act) when (1) the application would be approved but for the applicant's inability, unless aided by such a grant, to finance the nonfederal share of the cost of a project; or (2) after the approval of the application the project cannot, without such grant, be completed because of flood, fire, or similar emergency affecting either the work on the project or the applicant's ability to finance the nonfederal share of the cost of the project.

(b) Under paragraph (a)(1) of this section, a complete application (except applications under section 14 of the Act and applications with respect to which the Secretary has waived or reduced eligibility requirements under section 5(e) of the Act) may be considered for payment of part or all of the nonfederal share of the cost of any project which does not include more than minimum facilities for unhoused children only if:

(1) The application contains a request for payment under the Act; (2) the estimated number of children countable for payment under section 5 of the Act for the increase period equals or exceeds the number obtained by taking 12 percent of the average daily membership of the applicant district for the base year applicable to the increase period under consideration, except that, if 1 or more years in the increase period were included in a previous application for which payment has been made or may be made, the percent shall be 9 percent if 1 year was included, 6 percent if 2 years were included, and 3 percent if 3 years were included; (3) the applicant has exhausted all fiscal resources, including State aid, bonding authority, and Federal aid, which are practicably available to it and is unable to pay the nonfederal share of the cost of the project; (4) it has been reached on the priority or subpriority indices established

under this part; and (5) Federal money reserved under paragraph (a) of this section is available. The additional payment to the applicant under this section may not exceed the cost of providing minimum school facilities for the number of unhoused children as of the end of the increase period, less all financial resources practicably available to the applicant as of the same period; nor may it exceed the difference between (i) the actual cost of providing minimum facilities for the federally connected pupils eligible for payment under the Act, or the average cost in the State of providing such facilities, whichever is the lesser, and (ii) the Federal funds made available to the applicant under section 5 of the Act plus local and State funds which may be made available for this purpose.

(c) Under paragraph (a)(2) of this section, a request by the applicant may be considered for the additional payment of part or all of the funds required to complete a project (to the extent that the completed project will not provide more than minimum school facilities for unhoused children) for which a project application under the Act has been approved only if:

(1) Federal money reserved under paragraph (a) of this section is available; (2) the applicant cannot complete the project because of flood, fire, or similar emergency affecting either the work on the project or the applicant's ability to finance the nonfederal share of the cost of the project; and (3) the applicant has exhausted all financial resources practicably available to it, including State aid, bonding authority, and Federal aid. The payment to be made under this paragraph may not exceed the amount required to pay the additional cost caused by the emergency less any financial resources of the applicant practicably available for such purposes, including the proceeds of any insurance.

(20 U.S.C. 638)

§ 221.17 School facilities for children whose membership is of temporary duration only.

(a) If the Secretary determines that the membership of some of the children of the applicant, representing otherwise countable Federal increases under section 5 of the Act, will be of temporary duration only, the membership of such children must be excluded in computing maximum payments under such section 5.

(20 U.S.C. 639)

(b) The Secretary when proper request therefor is made in a complete application, may: (1) Make available to such applicant such temporary school facilities as may be necessary to take care of the membership of such children as the Secretary determines will be of temporary duration only, as defined in § 221.1(o), or (2) where the applicant gives assurance in a complete application that at least minimum school facilities will be provided for such children, pay (on such terms and conditions as he deems appropriate to carry out the purposes of the Act) to such applicant for use in constructing school facilities an amount not greater than the amount which he estimates will be necessary to make available temporary facilities for such children, but the amount so paid shall not exceed the cost of constructing minimum school facilities for such children. In no case will provision for such children be made unless they are deemed to be without minimum school facilities.

(20 U.S.C. 634, 639)

§ 221.18 Determination of eligibility under section 14.

(a) The requirements contained in section 14(a)(1) of the Act will be deemed to have been met when one of the following conditions exist:

(1) The total number of children who reside on Indian lands (for whom the applicant is providing, or upon completion of the school facilities for which provision is made, will provide, free public education, and whose membership in the schools of such applicant has not formed and will not form the basis for payments under other provisions of the Act) is at least 15 and represent at least 33⅓ percent of the total number of children for whom the applicant is providing free public education (such percentage requirement

may, however, be waived by the Secretary under § 221.35);

(2) The Indian lands in the school district of the applicant represent at least 33⅓ percent of the total land area of the school district; or

(3) The applicant is providing, or upon completion of the school facilities for which provision is made will provide, free public education to 100 or more children who reside on Indian lands located outside the local educational agency.

(20 U.S.C. 644(a)(1))

(b) The requirement contained in section 14(a)(4) of the Act will be deemed to have been met when, in accordance with the provisions of paragraph (d) of § 221.1, the applicant does not have available sufficient funds to provide minimum school facilities for at least 95 percent of the total number of children estimated to be in membership in the applicant's schools as of the end of the second year following the end of the increase period for which the application is filed.

(20 U.S.C. 644(a)(4))

(c) The requirement in section 14(b)(1) of the Act will be deemed to have been met when one of the following conditions exist:

(1) The estimated number of children who reside on Indian lands as of the close of the increase period (for whom the applicant is providing, or upon completion of the school facilities for which provision is made, will provide, free public education, and whose membership in the schools of such applicant has not formed and will not form the basis for payments under other provisions of the Act) is at least 15 and represents at least 10 percent of the total number of children for whom the applicant is providing free public education. (Such percentage requirement may, however, be waived by the Secretary under § 221.36);

(2) The Indian lands in the school district of the applicant represent at least 10 percent of the total land area of such school district, or

(3) The applicant is providing, or upon completion of the school facilities for which provision is made, will provide, free public education to 100 or more children who reside on Indian lands located outside the applicant's school district.

(20 U.S.C. 644(b)(1))

(d) The requirement in section 14(c)(1) of the Act will be deemed to have been met when the following conditions exist:

(1) The total number of children who are inadequately housed by minimum school facilities (for whom the applicant is providing, or upon completion of the school facilities for which provision is made, will provide, free public education, and whose membership in the schools of such applicant has not formed and will not form the basis for payments under other provisions of the Act) is at least 20 and represents at least 33⅓ percent of the total number of children for whom the applicant is providing free public education (such percentage requirement may, however, be waived by the Secretary under § 221.37); and

(2) The Federal property in the school district of the applicant represents at least 33⅓ percent of the total land area of the school district.

(20 U.S.C. 644(c)(1))

(e) The requirement in section 14(c)(4) of the Act will be deemed to have been met when, in accordance with the provisions of paragraph (d) of § 221.1, the applicant does not have available sufficient funds to provide minimum school facilities for at least 95 percent of the total number of children estimated to be in the applicant's schools as of the end of the second year following the end of the increase period for which the application is filed.

(20 U.S.C. 644(c)(4))

Subpart D—Criteria for Waivers Under the Act

§ 221.30 Application for waivers.

Applications for waivers pursuant to section 5(e) of the Act shall be made in accordance with Maximum Grant (ED Form 355). Such application may request a waiver with regard to the entire local educational agency, or any portion thereof, as appropriate.

(20 U.S.C. 635(e))

§ 221.31 Criteria for waiver under section 5(e) of minimum number requirement of 20 in section 5(c).

The Secretary will not, under section 5(e) of the Act, waive or reduce the minimum increase number of 20 in federally connected membership required by section 5(c) unless the conditions set forth in paragraphs (a) through (d) of this section, or that set forth in paragraph (e) of this section, are met:

(a) The applicant would otherwise be eligible for the assistance requested;

(b) The estimated increase in federally connected membership in the increase period is at least 25 percent of the base year total average daily membership;

(c) The local educational agency is located in a remote or isolated area, or the Federal impact is in an attendance area or other geographical area which is located in an isolated or remote part of the local educational agency;

(d) The local educational agency has need for additional classroom facilities or related school facilities in order to provide minimum school facilities for the estimated number of children in the remote or isolated area who will be in the membership of the schools at the close of the increase period covered by the application;

(e) The Secretary determines that other exceptional circumstances exist which in his judgment require such waiver or reduction to avoid inequity and to avoid defeating the purposes of the Act.

(20 U.S.C. 635 (c), (e))

§ 221.32 Criteria for waiver under section 5(e) of percentage requirements for federally connected and nonfederally connected membership in section 5(c).

(a) The Secretary will not, under section 5(e) of the Act, waive or reduce the percentage requirement or requirements in section 5(c) of the Act, waive the requirement contained in the first sentence of section 5(d) of the Act, or reduce the percentage specified in clause (2) of such sentence, unless the conditions set forth in paragraphs (a) (1) through (5) of this section, inclusive, or that set forth in paragraph (a)(6) of this section, are met:

(1) The applicant would otherwise be eligible for the assistance requested;

(2) The applicant specifically states the extent to which it desires the Secretary to exercise his authority to waive or reduce one or more of such requirements and makes appropriate requests therefor, agreeing that if such a request is granted in whole or in part in computing maximum payment under the Act, only membership of children within the federally impacted attendance area shall be considered;

(3) The applicant has two or more attendance areas, and its jurisdictional area is countywide or is sufficiently extensive as to be reasonably analogous to a countywide school system;

(4) In the increase period for which the application is made the Federal impact is equal to at least 10 percent of the average daily membership in the base year in an attendance area or other geographical area which is located in an isolated or remote part of the local educational agency;

(5) The school district is located in a remote or isolated area, or the Federal impact is in an attendance area or other geographical area which is located in a remote or isolated part of the school district;

(6) The Secretary determines that other exceptional circumstances exist which in his judgment require such waiver or reduction to avoid inequity and to avoid defeating the purposes of the Act.

(b) If the Secretary decides to waive or reduce one or more of the requirements set forth in § 221.31 or paragraph (a) of this section:

(1) The Secretary will determine which requirement or requirements the Secretary will waive, or reduce, and, if the latter, the extent of such a reduction;

(2) The Secretary will determine the geographical area of the applicant which will be considered as constituting the federally impacted attendance area; and

(3) The application will otherwise be processed under the Act and this part, taking into consideration only the fed-

erally impacted attendance area determined under paragraph (b)(2) of this section, but in no case will payments under this paragraph exceed the amounts computed for the local educational agency as a whole taking into consideration the waivers or reductions made by the Secretary.

(20 U.S.C. 635 (c) and (e))

§ 221.33 Criteria for waiver under section 5(e) for children residing on Federal property.

(a) The Secretary will not, under section 5(e) of the Act, waive or reduce the percentage increase requirement in section 5(c) of the Act with respect to children residing on Federal property, or waive or reduce the percentage increase requirement in section 5(d) of the Act with respect to nonfederally connected children, unless the conditions set forth in paragraphs (a) (1) through (5) of this section are met:

(1) The applicant would otherwise be eligible for the assistance requested;

(2) The applicant specifically states the waiver it desires or the extent to which it desires a reduction in one or more requirements, and makes an appropriate request therefor in which it agrees that, if such a request is granted in whole or in part, only the Federal property upon which the children reside shall be considered as a federally impacted attendance area in computing maximum payment under the waiver or reduction in requirements and that only children residing on the Federal property constituting the federally impacted attendance area will be considered in determining the increase in membership of federally connected children;

(3) There has been an increase in membership of the children residing on the Federal property constituting the federally impacted attendance area in the increase period for which the application is made of at least 50 and equal to at least 8 percent of the average daily membership of such children in the base year, or there are at least 50 more children residing on such Federal property than were estimated to be in the membership of the applicant's schools at the end of the increase period under the last previous application for which payment has been made or may be made;

(4) The applicant has need for additional classrooms or related school facilities on the basis of the local educational agency as a whole, or the school facilities of such applicant are not reasonably accessible to the children residing on the Federal property constituting the federally impacted attendance area because of their location or the infeasibility of transporting the children residing on such Federal property to such facilities; and

(5) The school facilities to be constructed with the funds made available to the applicant upon approval of the waiver will be located on the Federal property or close enough thereto to serve the children residing thereon.

(b) If the Secretary decides to waive or reduce the percentage increase requirement in section 5(c) of the Act with respect to children residing on Federal property, or the percentage increase requirement with respect to nonfederally connected children in section 5(d) of the Act:

(1) The Secretary will determine which requirements the Secretary will waive or reduce and the extent of any such waiver or reduction; and

(2) The Secretary will determine the geographical area of the applicant which will be considered as constituting the federally impacted attendance area; and

(3) The application will otherwise be processed under the Act and this part, taking into consideration only the federally impacted attendance area determined under paragraph (b)(2) of this section, but in no case will payments under this paragraph exceed the amount computed for the local educational agency as a whole, taking into consideration the waivers or reductions made by the Secretary.

(20 U.S.C. 635 (c), (d), and (e))

§ 221.34 Criteria for waiver under section 5(e) of limitation on number of federally connected children eligible for payment in section 5(f).

Waivers of the limitation on the number of federally connected children eligible for payment will be made in accordance with the following standards and procedures:

(a) Waivers for children residing in Federal housing:

(1) The Secretary will determine the geographical area of the applicant which will be considered the federally impacted attendance area;

(2) The application will otherwise be processed under the Act and this part, taking into consideration only the federally impacted attendance area determined under paragraph (a)(1) of this section, but in no case will payments under this paragraph exceed the amounts computed for the local educational agency as a whole taking into consideration the waivers or reductions made by the Secretary.

(3) The applicant must show that, after receiving Federal funds based primarily on the eligibility of children residing in Federal housing and using them to construct school facilities to serve such children, some or all of the Federal housing became nonfederal property, and as a result:

(i) There is a reduction in the number of federally connected children for whom school facilities were constructed;

(ii) Additional Federal housing was or will be constructed in another attendance area of the local educational agency;

(iii) Not less than 8 years after the Federal housing becomes nonfederal property, the increase in a 4-year period in federally connected membership residing in the additional Federal housing is at least 50 and at least 8 percent of the average daily membership of such children in the base year of the increased period;

(iv) The local educational agency has need for additional school facilities for the local educational agency as a whole as of the end of the second year following the increase period for which the application is filed; and

(v) The school facilities to be constructed will be located reasonably close to the area in which the new increase in federally connected membership resides.

(4) The application will be processed taking into consideration only the increase in membership in a 4-year increase period of the children residing in the additional Federal housing. Payment will be limited to providing minimum school facilities for such children estimated to be in membership as of the second year following the increase period.

(b) Waivers for children whose parents are employed in temporary activities on Federal property:

(1) The Secretary will determine the geographical area of the applicant which will be considered the federally impacted attendance area; and

(2) The application will otherwise be processed under the Act and this part, taking into consideration only the federally impacted attendance area determined under paragraph (b)(1) of this section, but in no case will payments under this paragraph exceed the amounts computed for the agency as a whole taking into consideration the waivers or reductions made by the Secretary;

(3) The applicant must show that, after receiving Federal funds based primarily on the membership of children whose parents were engaged in temporary activities on Federal property (such as the construction of a dam, power station, highway, or reclamation project) such funds were used to provide school facilities to serve primarily the children whose parents were so engaged; the temporary activity on Federal property was completed or greatly reduced, and as a result, the following conditions exist:

(i) The children whose parents were engaged in such temporary activities have moved out of the area;

(ii) Not less than 8 years after the temporary activity on Federal property was completed or greatly reduced, the increase in a four-year period in the membership of children whose parents are engaged in temporary activities on Federal property in a second area (remote from the first area of temporary Federal activity) is at least 50 and at least 8 percent of the base year average daily membership of such children;

(iii) The local educational agency has need for additional school facilities in the second area of temporary activity as of the end of the second year following the increase period for which the application is filed; and

(iv) The school facilities to be constructed will be located reasonably close to the area in which the new increase in federally connected membership resides;

(4) The application will be processed taking into consideration only the increase in membership in a 4-year increase period of the children whose parents are engaged in the new temporary projects on Federal property, and payment will be limited to providing minimum school facilities for such children estimated to be in membership as of the second year following the increase period.

(20 U.S.C. 635 (e)(3), (f))

§ 221.35 Criteria for waiver of percentage requirement in section 14(a).

(a) The Secretary will not waive the substantial percentage requirement imposed by section 14(a)(1) of the Act unless the conditions set forth in paragraphs (a) (1) through (6) of this section, or that are set forth in paragraph (a)(7) of this section, are met:

(1) The applicant would otherwise be eligible for the assistance requested;

(2) The applicant makes a request to waive such percentage requirement;

(3) The applicant's school district is countywide or is sufficiently extensive as to be analogous to a countywide school district;

(4) There has been a concentration of children residing on Indian lands located in a remote or isolated area;

(5) The number of children residing on Indian lands located in the remote or isolated area and estimated to be in membership in the applicant's schools as of the close of the membership period for which the application is filed is at least 15 and constitutes at least 20 percent of the total number of children in membership in the district as a whole and for whom the applicant is providing free public education;

(6) The Federal lands in the applicant's school district constitute at least 80 percent of the total area of such district;

(7) The Secretary determines that other exceptional circumstances exist which in the Secretary's judgment require such waiver or reduction to avoid inequity and to avoid defeating the purpose of the Act.

(b) If the Secretary waives the specified percentage requirement under paragraph (a) of this section, the application will be processed under the Act and this part, taking into consideration only the remote or isolated attendance area; but in no case will payments under this paragraph exceed the cost of construction of minimum school facilities in the local educational agency for the number of all children in the approved waiver area which the Secretary determines will be in membership in the schools of the applicant as of the close of the second year following the close of the membership period for which the application is filed, and who would otherwise be without such facilities, less the amount of financial resources which the Secretary determines to be practicably available to the applicant from local, State, or other Federal sources.

(20 U.S.C. 644(a))

§ 221.36 Criteria for waiver of substantial percentage requirement in section 14(b).

(a) The Secretary will not waive the substantial percentage requirement imposed by section 14(b)(1) of the Act unless the conditions set forth in paragraphs (a) (1) through (6) of this section, or that are set forth in paragraph (a)(7) of this section, are met:

(1) The applicant would otherwise be eligible for the assistance requested;

(2) The applicant makes a request to waive such percentage requirement;

(3) The applicant's school district is countywide or is sufficiently extensive as to be analogous to a countywide school district;

(4) There has been a concentration of children residing on Indian lands located in a remote or isolated area;

(5) The number of children living on Indian lands located in the remote or isolated area and estimated to be in membership in the applicant's schools as of the close of the membership period for which the application is filed is at least 15 and constitutes at least 5 percent of the total number of children in membership in the district

as a whole and for whom the applicant is providing free public education;

(6) The Federal lands in the applicant's school district constitute at least 20 percent of the total area of such district;

(7) The Secretary determines that other exceptional circumstances exist which in the Secretary's judgment require such waiver or reduction to avoid inequity and to avoid defeating the purpose of the Act.

(b) If the Secretary waives the specified percentage requirement under paragraph (a) of this section, the application will be processed under the Act and this part, taking into consideration only the remote or isolated attendance area; but in no case will payments under this paragraph exceed the cost of construction of minimum school facilities for the number of children which the Secretary determines will reside on Indian lands in the remote or isolated area and who will be in membership in the schools of such applicant as of the close of the second year following the close of the membership period for which the application is filed, and who would otherwise be without such facilities, and which cost has not been, and is not to be recovered by the applicant from other sources, including payments by the United States under any other provisions of the Act or any other law.

(20 U.S.C. 644(b))

§ 221.37 Criteria for waiver of substantial percentage requirement in section 14(c).

(a) The Secretary will not waive the substantial percentage requirement imposed by section 14(c)(1) of the Act unless the conditions set forth in paragraphs (a)(1) through (6) of this section, or that set forth in paragraph (a)(7) of this section, are met:

(1) The applicant would otherwise be eligible for the assistance requested;

(2) The applicant makes a request to waive such percentage requirement;

(3) The applicant's school district is countywide or is sufficiently extensive as to be analogous to a countywide school district;

(4) There has been a concentration of children who are inadequately housed by minimum school facilities located in a remote or isolated area;

(5) The number of children who are inadequately housed by minimum school facilities located in the remote or isolated area and estimated to be in membership in the applicant's schools as of the close of the membership period for which the application is filed is at least 20 and constitutes at least 20 percent of the total number of children in membership in the local educational agency as a whole and for whom the applicant is providing free public education;

(6) The Federal lands in the applicant's school district constitute at least 80 percent of the total area of such district;

(7) The Secretary determines that other exceptional circumstances exist which in his judgment require such waiver or reduction to avoid defeating the purpose of the Act.

(b) If the Secretary waives the specified percentage requirement under paragraph (a) of this section, then the application will be processed under the Act and this part, taking into consideration only the remote or isolated attendance area; but in no case shall payments hereunder exceed the cost of construction of minimum school facilities for the number of children in the remote or isolated attendance area (or approved attendance area) which the Secretary determines are inadequately housed and who will be in increase in the schools of such applicant as of the close of the second year following the close of the membership period for which the application is filed, and who would otherwise be without such facilities, minus any portion of the cost which has not been, and is not to be, recovered by the applicant from other sources, including any amount which the Secretary determines is or will be practicably available to the applicant from any local, State, or Federal sources.

(20 U.S.C. 644(c))

Subpart E—Certification of Payments

§ 221.41 Certification of payments.

Except with respect of payments under sections 10 and 14 of the Act, payments to an applicant will be made only on the basis of a complete application satisfying conditions for payment under the Act and this part, and will be restricted in amount to the cost of providing minimum school facilities for unhoused children. With respect to such payments:

(a) The Federal share of the cost of a project which will be certified for payment, within the maximum otherwise payable under the Act (except as provided in section 8 thereof), will not exceed the cost of constructing minimum school facilities in the local educational agency nor the cost of constructing minimum school facilities for the estimated number of children who will be in the membership of the schools of such applicant at the close of the second year following the increase period under consideration and who will otherwise be unhoused; and

(b) Nothing in this part shall be deemed to bar an applicant, with the approval of the State educational agency, from using for an approved project, in addition to payments under this part, money otherwise obtained to provide a higher quality, larger, or better equipped school facility. The applicant will be required to show in such cases that the added cost is being met other than from payments under this part.

(20 U.S.C. 634, 638, 644(g))

(c) Payments to an eligible applicant whose maximum entitlement for a fiscal year includes pupils eligible for payment under section 5(a) (1), (2) or (3) of the Act as residing with a parent either residing on or employed on a low-rent housing property, as defined in the Act, will be made only after all other applications under subparagraphs (2) and (3) of section 5(a) have been approved for that fiscal year. The applications with entitlements computable on account of pupils eligible under these categories will be listed in a separate priority order in accordance with the priority index of the application as initially processed.

(20 U.S.C. 633)

§ 221.42 Certification of payments under section 14.

Payments to an applicant under section 14 of the Act will be made only on the basis of a complete application satisfying conditions for payment under the Act and this part, and will be restricted in amount to the cost of providing minimum school facilities for unhoused children; however:

(a) With respect to payments under section 14(a) of the Act, except for applications with respect to which the Secretary has under § 221.35 waived the substantial percentage requirement, the Federal share of the cost of a project which will be certified for payment will not exceed the difference between (1) the cost of constructing minimum school facilities in the school district of the applicant for the estimated number of children who will be in membership in the schools of such applicant at the close of the second year following the close of the increase period under consideration and who will otherwise be without such facilities, and (2) the amount which the Secretary determines to be practicably available to the applicant from other sources, including local sources (for example, unused bonding capacity), and State, and other Federal sources (for example, payments by the United States under any other provisions of the Act or any other law). Such payments will be made upon such terms and in such amounts, subject to the provisions of section 14(a) of the Act and this part, as the Secretary deems to be in the public interest.

(b) With respect to payments under section 14(b) of the Act, except for applications with respect to which the Secretary has under § 221.36 waived the substantial percentage requirement, the Federal share of the cost of a project which will be certified for payment will not exceed that portion of the cost of constructing minimum school facilities in the school district of the applicant which the Secretary determines (1) is attributable to children who reside on Indian lands and who will be in membership in the schools of such applicant at the close of the second year following the close of the increase period under consideration and who will otherwise be unhoused, and (2) has not been, and is not to be recovered by the applicant from other sources, including payments by the United States under any other provisions of the Act, or any other law.

(c) With respect to payments under section 14(c) of the Act, except for applications with respect to which the Secretary has under § 221.37 waived the substantial percentage requirement, the Federal share of the cost of a project when certified for payment will not exceed the difference between (1) that portion of the cost of constructing minimum school facilities in the school district of the applicant that the Secretary determines is attributable to children who are inadequately housed by minimum school facilities and who will be in membership in the schools of such applicant at the close of the second year following the close of the increase period under consideration and who will otherwise be without such facilities, and (2) the amount which the Secretary determines to be practicably available to the applicant from other sources, including local sources (for example, unused bonding capacity), State and other Federal sources (for example, payments by the United States under any other provisions of the Act or any other law). Such payments may be made upon such terms and in such amounts, subject to the provisions of section 14(c) of the Act and this part, as the Secretary may consider to be in the public interest, less the amount of financial resources which the Secretary determines to be practicably available to the applicant from local, State or other Federal sources.

(20 U.S.C. 644(c))

§ 221.43 Payments.

(a) *Basis of payments.* The initial payment, except under section 10 of the Act, will be 10 percent of the approved estimated Federal share of the project cost. Payment of the remainder of the estimated Federal share shall not exceed the cost of the project.

(b) *Excess cost contracts.* No construction contract exceeding the estimated cost as shown in the project application shall be entered into without prior approval of the Secretary.

(20 U.S.C. 634, 636, 637, 644(f), 1232(c); FMC 74-7)

Subpart F—General Provisions With Regard to Construction of Minimum School Facilities

§ 221.51 Works of art.

The cost of works of art (as defined in Part 100 of the General Provisions for Department Programs (45 CFR Part 100)) when included in an approved construction project financed in whole or in part with Federal funds under the Act, shall not exceed 1 percent of the Federal share of the total cost of the project, exclusive of the cost of movable equipment. Nothing contained in this part, however, shall be deemed to bar an applicant, with approval of the State educational agency, from including works of art in excess of 1 percent of such Federal share with the use of nonfederal money.

(20 U.S.C. 645(10)(B))

§ 221.53 Excellence of architecture and design of minimum school facilities.

Local educational agencies shall give due consideration to excellence of architecture and design when constructing minimum school facilities under the Act. The applicant shall furnish an appropriate assurance to this effect and any other evidence that such consideration has been given as may be required by the Secretary.

(20 U.S.C. 645(10)(A))

§ 221.55 Applicability of General Provisions Regulations.

(a) Provisions contained in Parts 100 and 100a of the regulations entitled "General Provisions for Department Programs" are applicable to programs conducted under the Act, with the following exceptions:

(1) Section 100a.26b (Criteria for review of applications);

(2) Section 100a.161 (Title to site);

(3) Subpart L, §§ 100a.209-100a.220 (Property management requirements);

(4) Section 100a.233 (Sale of real and personal property); and

(5) Section 100a.235 (Other program income).

(b) It should be noted that certain of the provisions in such regulations are not, by their own terms, pertinent to activities which may be conducted pursuant to the Act, such as:

(1) Section 100a.19 (Cooperative arrangements);

(2) Section 100a.43 (Application for Federal assistance (nonconstruction projects));

(3) Section 100a.45 (Application for Federal assistance (short form));

(4) Section 100a.62 (Payments methods for nonconstruction projects);

(5) Section 100a.82 (Institutions of higher education);

(6) Section 100a.83 (Nonprofit organizations);

(7) Subpart H, §§ 100a.90-100a94 (Matching and cost sharing);

(8) Section 100a.122 (Loan guarantees);

(9) Section 100a.234 (Royalties); and

(10) Section 100a.258 (Leasing facilities).

§ 221.58 Procurement of school facilities.

(a) All procurement of school facilities under the Act, including initial equipment, shall be made in accordance with Subpart I of Part 100a of the General Provisions for Department Programs (45 CFR Part 100a, Subpart I).

(b) Plans and specifications, as appropriate, of school facilities provided under sections 9, 10, and 14 of the Act must, in advance of progressing to the next development stage, be approved by the Secretary from the viewpoint of educational adequacy.

(c) Bid and contract documents shall be submitted to the Secretary for his approval in accordance with such procedures as he may prescribe.

(d) Equipment procured with payments under the Act must be approved by the Secretary before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of all equipment to be procured (indicating estimated quantities, costs and specifications) must be provided to the Secretary for his prior approval.

(e) When total funds required for the low equipment bid or proposal received are in excess of the approved equipment budget, additional funds needed to make the award must be provided by:

(1) Adjusting the approved estimate of other budget items (if surplus funds can be identified) for transfer to the equipment budget item;

(2) The applicant providing all the necessary additional funds from sources other than the Act; or

(3) Increasing the Federal contribution to the project if entitlement is available.

A written proposal must be submitted to the appropriate O. E. Regional Program Officer for review and recommendation for decision regarding how such additional funds are to be provided. If method (i) is proposed, those approved project budget items in which there are surplus funds available for transfer must be identified. If method (ii) is proposed a written certification signed by the applicant's authorized representative must be furnished, stating that the cost of the bid overrun will be financed with applicant funds. Regardless of how the cost of the bid overrun is financed, it will be necessary to obtain prior approval in order that a revised project budget may be issued amending the approved equipment budget estimate.

(f) Substantial changes in lists of equipment previously approved to be procured must be approved in advance.

(g) A list of equipment procured with payments under the Act and the cost thereof must be furnished by the applicant and certified as having been received before final payment will be made.

(20 U.S.C. 636, 637)

Subpart G—Sections 9 and 10

§ 221.61 Conditions for assistance under section 10.

The Secretary may make arrangements for constructing or otherwise providing minimum school facilities under section 10 of the Act under one or more of the following conditions:

(a) No tax revenues of the State or any political subdivision thereof may be expended for constructing or for otherwise providing school facilities on Federal property which is leased to the local educational agency which will operate the school for pupils residing on Federal property; or

(b) The assurances and certifications described in § 221.65 have been provided; or

(c) Other conditions, as specified in section 10 of the Act, exist.

(20 U.S.C. 640 (a), (b))

§ 221.62 Requests for section 10 school construction.

(a) In order to be approved by the Secretary, the request for school facilities under section 10 of the Act must be (1) made by the official in control of the Federal property on which the facilities are to be located; (2) addressed to the Secretary, Attention: Director, Division of School Assistance in Federally Affected Areas; and (3) submitted through the State educational agency for its review and recommendations.

(b) After reviewing the request and making recommendations relative to it, the State educational agency shall transmit a copy of such recommendations and the original copy of the request to the Secretary including, when applicable, the legal citations which prohibit State or local funds from being expended for capital improvements on Federal property. Two copies of such materials must also be transmitted to the appropriate Regional ED Program Officer. The original request as submitted through the State educational agency will be regarded by the Secretary as the official request.

(c) The request for school facilities to be constructed or otherwise provided under section 10 of the Act shall contain the following data:

(1) Name of the agency which will operate the school program;

(2) Assurance that an adequate site will be made available for location of the proposed facility. This site shall be subject to final review and recommendation for approval or disapproval by the appropriate Regional ED Program Officer after consultation with the State educational agency and the Regional Engineer, ROFEC. (A site permit including the metes and bounds description of the approved site must be received by the Secretary before any planning activity will be authorized.)

(3) Assurance that funds under section 10 of the Act will not be used for any off-site construction.

(4) Assurance that the request will be coordinated with officials of the appropriate local educational agency when the facilities to be constructed or otherwise provided are not to be operated by a Federal agency;

(5) Pupil data, including:

(i) Number of pupils, by grade, who reside on and now attend school on the Federal property; and

(ii) Estimated number of pupils, by grade, who will reside on and attend school on the Federal property by the end of the fiscal year following the fiscal year in which the application is filed;

(6) The following data relating to family housing:

(i) Number of occupied family housing units now located on the Federal property;

(ii) Number of unoccupied family housing units now located on the Federal property;

(iii) Number of housing units to be completed on the Federal property (for which construction funds have been authorized in the current Department of Defense appropriation); and

(iv) Number of trailer or other temporary housing units. (Such units must be reported separately); and

(7) Narrative supporting statement, as may be appropriate.

(20 U.S.C. 640)

§ 221.63 Property management: Sections 9 and 10.

(a) School facilities, including initial equipment, provided by the Secretary through direct Federal construction under sections 9 and 10 of the Act on land made available to the Secretary for this purpose by a local educational agency or by a Federal agency shall be managed in accordance with FMC 74-7, Attachment N and this part.

(b) A site permit authorizing the use of land must be issued to the Secretary by the Federal agency in control of the Federal property or by the local educational agency prior to the constructing or otherwise providing school facilities thereon by the Secretary under the provisions of sections 9 and 10 of the Act. Such permit must contain:

(1) A metes and bounds description of the land to be used for the facility;

(2) Assurance of the right, if necessary, to connect to the base utility system as extended to the site boundary, or to connect with public utility systems, if necessary; and

(3) Assurance of adequate police and fire protection and construction and maintenance of roads.

(c) The Secretary may issue to the appropriate Federal agency or local educational agency a use permit granting such agency the right to use and occupy, for school purposes, federally owned school facilities constructed under section 9 or 10 of the Act for which the Secretary is accountable.

(1) Such use permits granted to a Federal agency must include assurances that such agency will:

(i) Conduct in such facilities an educational program for children residing on the Federal installation, comparable to that afforded children in comparable local school systems under the laws of the State;

(ii) Pay all charges for utilities and services furnished to the property;

(iii) Use the property during the term of the permit subject to such rules and regulations prescribed by the officer in charge of the installation as are consistent with the purposes for which the property is permitted;

(iv) Maintain and keep the property in good repair and operating condition on the present site, subject to reasonable instructions of the Secretary, and immediately upon the termination of the permit as therein provided (will deliver possession of the same) to the Secretary in as good condition and state of repair as the property is in when delivered to the agency, reasonable wear and tear and loss or damage caused by war excepted. (Repairs to or reconstruction of the property requiring expenditures in excess of $15,000,000 shall be upon plans approved by the Secretary);

(v) Permit the Secretary, or his authorized representatives, at any reasonable time to enter upon and inspect the property;

(vi) Submit current inventories, at the Secretary's request, of the equipment, furnishings and appurtenances located in the facilities or on the site;

(vii) Assume responsibility, without obligation to the Secretary, to do all things necessary and proper on its part under the applicable laws and regulations in order to settle or deny (as may be appropriate under the circumstances) liability for all claims, if any, made against the United States of America or any of its agents for damages on account of the injury to or death of any person or the damages to or destruction of any property connected with, or arising out of, the agency's use of the permitted premises;

(viii) Not assign or transfer its rights or interest under this permit, or transfer possession of, or remove, or dispose of the property or any part thereof, including any and all movable school equipment provided under section 10 of the Act (or, if applicable, under section 6 of Pub. L. 81-874) without the Secretary's written consent; and

(ix) Assure that the operation of school facilities which may be located on the property shall be conducted without discrimination on the basis of race, color, sex, or national origin.

(2) Such use permits granted to a local educational agency shall include assurances that such agency will:

(i) Conduct in such facilities an educational program for children residing on the Federal installation, as a part of the agency's school system in accordance with the laws of the State;

(ii) Pay all charges for utilities and services furnished to the property. Payment shall be made directly to the producing or supplying company or to the Federal agency for the utilities and services produced or supplied by each, respectively;

(iii) Use the property during the term of the permit subject to such reasonable rules and regulations relative to ingress, egress, security, and nonschool use as may be prescribed by the head of the Federal agency, or the officer in charge of the installation, with the approval of the Secretary;

(iv) Maintain and keep the property in good repair and operating condition on the present site, subject to reasonable instructions of the Secretary and, immediately upon the termination of the permit as therein provided, shall return the property to the Secretary in as good condition and state of repair as the property is in when delivered to the agency, reasonable wear and tear and loss or damage caused by war excepted. (Repairs to or reconstruction of the property requiring expenditures in excess of $15,000.00 require prior plans approved by the Secretary);

(v) Procure and maintain insurance for the repair and reconstruction of the facilities due to damages occasioned by risks (such as fire and the elements) to which the property may be exposed and such additional insurance as the Secretary may require. Further, such local educational agency must provide assurance that it will promptly deliver proof of such coverage to the Secretary, and shall give due notice to the proper insurance companies and to the Secretary of any loss or damage to the property;

(vi) Remit to the United States any payment received by it pursuant to insurance provided which may be in excess of the cost of such repairs;

(vii) Permit the Secretary, or the Secretary's authorized representatives, at any reasonable time, to enter upon and inspect the property, and submit at the Secretary's request current inventories of the equipment, furnishings, and appurtenances located in the facilities or on the site;

(viii) Save the United States and the Secretary harmless from any liability or claim arising from the agency's possession, use, maintenance, and operation of the property or the fulfillment of its obligation hereunder and if the agency is insured against tort liability with respect to other school facilities which it owns and operates, it shall carry similar insurance with respect to the property herein described;

(ix) Not assign or transfer its rights or interest under the permit, transfer possession of, or remove, or dispose of the property or any part thereof, or create or permit to be created a lien or charge upon or claim against the property or any part thereof, including any and all movable school equipment provided under sections 9 and 10 of the Act without the Secretary's written consent;

(x) Assure that operation of school facilities which may be located on the property shall be conducted without discrimination on the basis of race, color, sex or national origin; and

(xi) In the case of a local educational agency whose permit includes living quarters for teachers and other local educational agency employees which were constructed under provisions of section 10 (former sections 204 and 310) of the Act and for which rental or other such fees are charged, the local educational agency must assure the Secretary that it will submit, through the State educational agency, a revenue and expenditure report in such form as the Secretary may require within 30 days after the end of each of the first three quarters of each year. The agency must also assure the Secretary that, at the end of the last quarter on June 30, it will submit through the State educational agency a final revenue and expenditure report and an audit thereof.

(3) Use permits may be subject to revocation by the Secretary for any of the following reasons:

(i) Failure of the agency to operate the property in accordance with the terms and conditions of the permit or the arrangements between the Secretary and the agency under section 6 of Pub. L. 81-874;

(ii) Determination by the Secretary that other arrangements will better serve the interests of the United States or the children involved;

(iii) Termination of the permit for the use of the land granted to the Secretary by the controlling Federal agency; or

(iv) Termination of the authority and responsibility of the Secretary to provide school facilities and make arrangements for free public education for children who reside on Federal establishments under the Act and Pub. L. 81-874, or subsequent laws of the United States.

(20 U.S.C. 639, 640(a); FMC 74-7)

§ 221.64 Disposal of federally owned temporary school facilities provided under section 9.

(a) The Secretary may transfer to the local educational agency title to temporary school facilities constructed under section 9 (former sections 203 and 309) of the Act if:

(1) The local educational agency to which the facilities were provided makes a written request to the Secretary for transfer of the facilities;

(2) Such agency gives assurance of a continuing need for the temporary school facilities for school purposes;

(3) Such agency certifies that it has title to the site on which they are located, or a leasehold interest in such site for a period of time equivalent to the usable life of the facilities; and

(4) The State educational agency certifies that the use of such facilities is not inconsistent with overall State plans.

(b) The Secretary may, as appropriate, declare temporary school facilities surplus to the needs of the local educational agency and may dispose of the facilities.

(20 U.S.C. 639)

[40 FR 16019, Apr. 8, 1975. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

§ 221.65 Transfer of title of federally owned school facilities provided under section 10 to local educational agencies.

The Secretary will transfer to a local educational agency all the right, title, and interest of the United States in and to any facilities provided under section 10 of the Act if the following conditions have been met:

(a) The local educational agency of the school district in which the federally owned school facility is located makes written request to the Secretary for transfer of the facility;

(b) Such agency does the following: (1) Certifies that the school facilities are located within the boundaries of its school district; (2) shows that there is a need on a continuing basis for use of the school facilities by the school district for public educational purposes; and (3) gives assurance that the facilities will be used as long as needed to house the children living on Federal property for whom they were constructed, and beyond that time will continue to use such facilities for public educational purposes for any remaining usable life of the facilities;

(c) Such agency certifies that it has acquired or will acquire title to the site, or a leasehold interest in the site, or right to use and occupy the facilities located on the site for a period of time equivalent to the remaining usable life of the school facilities. Evidence of title to the site, leasehold, or other interest in the site must be presented before title to the federally owned facilities will be granted;

(d) Such agency gives assurance that the educational program provided in such transferred facilities will be conducted without discrimination on the basis of race, color, sex, or national origin;

(e) The State educational agency certifies that, under State law, such local agency is legally authorized to spend State or local funds to construct, repair, maintain, and operate school facilities for public educational purposes on land leased to it from the Federal Government; and

(f) Such State agency certifies that the use of such facilities by such local agency is not inconsistent with overall State plans for providing school facilities in the State.

The Secretary will consider a request for the transfer to a local educational agency of school equipment provided under section 10 of the Act (or under section 6 of Pub. L. 81-874) in certain circumstances even if the school facilities in which the equipment is located are not to be transferred. Requests for the transfer of such equipment shall include information described in paragraphs (a), (b), (d), (e), and (f) of this section.

(20 U.S.C. 640(b))

APPENDIX A

[Pub. L. 81-815; Secs. 1-15]

ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES; GUIDELINES

TABLE OF CONTENTS

Part 1—Introduction

Sec.
1.1 Scope of guidelines.
1.2 Applicable statutes and regulations.

Part 2—Applications of Local Educational Agencies

2.1 Purpose of the Act.
2.2 Categories of Federal impact.
2.3 Who may apply
2.4 How to apply.
2.5 When to apply.
2.6 Processing procedures.
2.7 Instructions relating to construction of approved and funded projects.
2.8 Instructions relating to purchasing non-expendable property (initial equipment) acquired with Federal funds under sections 5, 8, 9, and 14 of the Act.

Part 3—Requests of Federal Agencies for School Facilities Under Section 10 of the Act

Sec.
3.1 Application procedures.
3.2 Processing procedures.
3.3 Actions relating to construction of approved and funded section 10 projects.

Part 4—Property Management of Facilities Constructed Under Section 10 and Certain Facilities Constructed Under Section 9 of the Act

4.1 Agencies may be granted use permits.
4.2 Disposal or transfer of ownership of federally owned school facilities.

Part 1—Introduction

SECTION 1.1 *Scope of guidelines.*

(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to Federal assistance under sections 1 through 15 of Pub. L. 81-815 (School Construction in Areas Affected by Federal Activities). The guidelines are not requirements. Where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 631; 113 Cong. Rec. 5935, 5936 (daily ed. May 23, 1967); *United States v. Jefferson County Board of Education*, 372 F. 2d 836, 857 (1966))

(b) Where a guideline is issued in connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guideline, in the parentheses following the guideline. For example, if the legal authority for the guideline is section 5 of the Act (20 U.S.C. 635), and the guideline affects § 221.31 of the regulation (34 CFR 221.31), the following will be placed on the line immediately following the guideline: (20 U.S.C. 635; 34 CFR 221.31). If no particular section of the regulation is affected, no citation to the Code of Federal Regulations (CFR) will be made.

(20 U.S.C. 1232(a))

(c) These guidelines rescind all bulletins, memoranda, and announcements previously issued by the Division of School Assistance in Federally Affected Areas.

SECTION 1.2 *Applicable statutes and regulations.*

The program of assistance for school construction in federally affected areas is to be carried out in accordance with applicable Federal statutes and regulations. Pertinent provisions include Pub. L. 81-815 (20 U.S.C. 631-645), the General Education Provisions Act (20 U.S.C. 1221 et seq.), the regulations for Pub. L. 81-815 (34 CFR Part 221), the General Provisions for Department Programs (45 CFR Parts 100 and 100a) except as specified in 34 CFR 221.66 and Federal Management Circular 74-7.

(20 U.S.C. 631-645, 1221 et seq.; 45 CFR Parts 100, 114; FMC 74-7)

Part 2—Applications of Local Educational Agencies

SECTION 2.1 *Purpose of the Act.*

Congress, in recognition of the impact which certain Federal activities may have on school construction needs, has declared it to be the purpose of the Act to provide assistance for construction of urgently needed minimum school facilities in certain areas affected by Federal activities.

(20 U.S.C. 631)

SECTION 2.2 *Categories of Federal impact.*

The following categories of Federal impact for the purpose of making Federal payments to local educational agencies are discussed in these guidelines:

(a) Section 5(a)(1): increase in numbers of children who reside on Federal property;

(20 U.S.C. 635(a)(1))

(b) Section 5(a)(2): increase in numbers of children who reside with a parent employed on Federal property situated in whole or in part in the same State as a school district or within a reasonable commuting distance of such district, or have a parent on active duty in the Uniformed Services;

(20 U.S.C. 635(a)(2))

(c) Section 5(a)(3): increase in numbers of children whose membership results from activities of the United States carried on either directly or through a contractor;

(20 U.S.C. 635(a)(3))

(d) Sections 14 (a) and (b): membership residing on Indian lands and which has not formed or will not form the basis for payment under other provisions of the Act; and

(20 U.S.C. 644 (a), (b))

(e) Section 14(c): inadequately housed children in financially distressed school districts where Federal property constitutes a substantial part of the school district.

(20 U.S.C. 644(c))

SECTION 2.3 *Who may apply.*

Applications may be filed by a local educational agency as defined in section 15(11) of the Act and § 221.1(m) of the Regulations.

(20 U.S.C. 645(11); 34 CFR 221.1(m))

SECTION 2.4 *How to apply.*

Application forms, instructions, advice, and assistance may be obtained from each State educational agency. All questions pertaining to the preparation and filing of preapplications, applications, and requests for materials should be directed to the State Representative for School Assistance, who will respond or may forward the inquiries, where appropriate, to the Secretary.

(20 U.S.C. 636; 34 CFR 221.1 (i), (k))

SECTION 2.5 *When to apply.*

Cutoff dates for filing preapplications and applications will, as appropriate, be established by the Secretary and published in the FEDERAL REGISTER. Copies of these periodic announcements of the cutoff dates appearing in the FEDERAL REGISTER will be provided to the State Representatives for School Assistance. Such State Representatives may be contacted for up-to-date information on current cutoff dates.

(20 U.S.C. 633, 636, 644; 34 CFR 221.1(k), 221.2)

SECTION 2.6 *Processing procedures.*

Upon receipt by the Secretary of a preapplication for assistance:

(a) The preapplication will be tentatively reviewed on the basis of data available, and if the preapplication appears to be eligible, a tentative entitlement and priority index will be computed, the applicant will be notified of the tentative determination. All preapplications will be listed in priority rank order accordingly on a list to be maintained by the Secretary on a nationwide basis.

(b) Upon verification of the applicant's data as shown on the preapplication, a firm maximum entitlement and priority index will be determined for each eligible applicant, the application will be listed in priority rank order, and the applicant will be informed of the basis of such action; if ineligible, the applicant will be informed as to the reasons therefor.

(c) When monies are available to reach the priority of the preapplication, funds will be reserved tentatively on the basis of the best information available at the time and the applicant will be advised to file a complete application for review and approval pursuant to 45 CFR Part 100a, Subpart B.

(20 U.S.C. 633, 636, 644, 645(7); 34 CFR 221.1 (i), (k), (s), 221.5, 221.6)

SECTION 2.7 *Instructions relating to construction of approved and funded projects.*

(a) *General.* (1) The Office of Facilities Engineering and Property Management Agency (hereinafter referred to as OFEPM) and the Regional Office of Facilities Engineering and Property Management (hereinafter referred to as ROFEPM) will provide, upon request, technical supervision and services to applicants in connection with the construction of school facilities. When appropriate, ED Program Officers (SAFA), in cooperation with representative of ROFEPM, will assist with the planning of approved projects, including examination of preliminary and final project plans and specifications, periodic inspection of construction progress and determination of the propriety of making partial payments of the estimated Federal share of the cost as construction progresses. Supervision of these technical services, will be performed by the Regional Engineer, ROFEPM.

(2) The Regional Engineer, ROFEPM, may assist in preconstruction and construction activities to assure conformity with the requirements of the Act. Approval of all proposed preconstruction documents (as described in § 221.58 of the regulations), may be obtained directly from the Regional Engineer. His assistance prior to the preparation of these and similar documents will be provided upon request. In this connection, he may suggest a preliminary conference with the project architect and others if that seems desirable. The Regional Engineer will provide sufficient copies of all forms which may be used to prepare the contract documents required for the project and will aid in the review of bids received and other technical details.

(3) Special assistance may also be provided to eligible applicants under the provisions of section 14 of the Act by SAFA Program Officers.

(20 U.S.C. 636, 637, 644)

(b) *Minimum standards of construction.* Plans and specifications for a project must comply with such Federal, State, and local laws, ordinances and regulations pertaining to standards of construction and safety requirements, as may be applicable.

(16 Comp. Gen. 948 (1937))

(c) *Preparation of plans and specifications.* Upon receipt of the notice of approval of the complete application, work may be commenced on preparing plans and specifications which conform to the project description as shown in the complete application, or with such revisions as may be necessary. After all necessary State approvals have been obtained, such plans and specifications must be forwarded for the approval of the Secretary as required by § 221.58 of the regulations. Such documents may be forwarded as follows: One copy of the final plans and specifications to the Regional Engineer (ROFEPM) and one copy to the appropriate Regional ED Program Officer (SAFA).

(20 U.S.C. 636(b)(1)(A), 637(a); 34 CFR 221.58)

(1) *Review by Regional ED Program Officer.* The Regional ED Program Officer will review the final plans and specifications for conformity with the project description as approved by the Secretary and recommend approval or disapproval action.

(2) *Review by Regional Engineer, ROFEPM.* The Regional Engineer will review the final plans and specifications for structural adequacy, and may suggest structural changes or revisions. A notice of approval will advise the date on which advertising for bids may begin. A notice of disapproval will state the reasons for such action.

(20 U.S.C. 633, 636(b), 637(a); 34 CFR 221.58)

SECTION 2.8 *Instructions relating to purchasing non-expendable property (initial equipment) acquired with Federal funds under sections 5, 8, 9, and 14 of the Act.*

The procurement of initial equipment with Federal funds under sections 5, 8, 9, and 14 of the Act must be made in accordance with 45 CFR Part 100a, Subpart I. Such procurement must be approved in advance by the ED Regional Program Officer (SAFA) in accordance with the regulations at 34 CFR 221.58.

A copy of the pertinent documents must be forwarded to and reviewed and recommended for approval by the Regional ED Program Officer before payment may be made as described in the regulations at 34 CFR 221.43.

(20 U.S.C. 636, 644; 34 CFR 221.43, 221.58)

Part 3—Requests of Federal Agencies for School Facilities under Section 10 of the Act

SECTION 3.1 *Application procedures.*

Requests for school construction to be performed under section 10 of the Act may be made in letter form by the official in control of the Federal property on which the facilities are to be located, in accordance with procedures described in regulations 34 CFR 221.58, 221.61, 221.62, and 221.63.

(20 U.S.C. 643(b); 34 CFR 221.58, 221.61, 221.62, 221.63)

SECTION 3.2 *Processing procedures.*

Upon receipt by the Secretary of the request:

(a) The request will be reviewed on the basis of data available, and if the request for assistance appears to be approvable a tentative cost estimate, priority grouping, and priority index will be computed and assigned. If the request is determined not to be approvable, the Federal agency will be so informed.

(b) Upon verification of data submitted as the basis of the request, the Secretary may determine that a project should be approved. The project will be assigned a priority index within a priority group and the Regional Engineer, ROFEPM will be requested to estimate the cost of the project to be approved.

(c) When monies are available to reach the priority of the project and funds are approved for direct Federal construction, the appropriate parties will be so notified.

(20 U.S.C. 640; 34 CFR 221.4, 221.5, 221.6, 221.61, 221.62)

SECTION 3.3 *Actions relating to construction of approved and funded section 10 projects.*

(a) The Secretary will consider recommendations of local and State education authorities, the Regional ED Program Officer, representatives of ROFEPM, and the Federal agency making the application. Educational consultants, if appropriate, may also be engaged by the Secretary for the purpose of assisting in developing educational specifications and otherwise assisting in developing the project.

(b) The Regional ED Program Officer will:

(1) Verify the data submitted as the basis of the application and make recommendations to the Division of SAFA on the need for the requested school facilities;

(2) Review the proposed school site for educational adequacy. Request the Federal agency controlling the property to prepare the metes and bounds description, including a plot plan, to be forwarded to the Division of SAFA in compliance with § 221.63(b) of the regulations;

(3) Review design sketches and preliminary plans and outline specifications for educational adequacy and recommend to the Division of SAFA approval or disapprov-

al of these documents and the reasons therefor;

(4) Review the final plans and specifications for educational adequacy and conformance with the approved project description and the approved preliminary plans and specifications and notify the Regional Engineer, ROFEPM, of approval or disapproval by the Secretary of such documents; and

(5) Review all requests for initial minimum equipment submitted pursuant to § 221.58(d) and notify the ED Regional Contracting Officer and the Regional Engineer, ROFEPM, of approval or disapproval by the Secretary. A list of initial equipment will be provided to the Regional Contracting Officer who will supervise its acquisition.

(20 U.S.C. 1221e(c)(2)(C); 20 U.S.C. 640(a)(b))

(c) The Regional Engineer ROFEPM will:

(1) Furnish the Division of SAFA with an estimate of the cost of the project to be constructed, and revisions of such estimate as may be appropriate;

(2) Negotiate architectural contracts for preparation of plans and specifications, after the estimated cost of constructing the project has been approved by the Division of SAFA;

(3) Request necessary State and local agency approvals of final plans and specifications;

(4) Secure permits for access and right of entry to project site;

(5) Monitor the execution of a contract for the construction of school facilities after approval of final plans and specifications; and

(6) Submit a final project summary stating all project costs including initial (movable) school equipment costs.

(d) The Division of SAFA will:

(1) Assist in the development of and approve the final project description;

(2) Approve the project funding and disburse funds in the appropriate manner to initiate the project;

(3) Review and approve sketches and preliminary plans and specifications; and

(4) Prepare use permits for acceptance by the operating agency upon completion of the project.

(20 U.S.C. 640(a), (b); 34 CFR 221.61, 221.62, 221.63, 221.65)

Part 4—Property Management of Facilities Constructed Under Section 10 and Certain Facilities Constructed Under Section 9 of the Act

SECTION 4.1 *Agencies may be granted use permits.*

The Federal agency or local educational agency to which use of the completed school facilities is granted, must maintain such school facilities, including equipment, in good conditions in accordance with § 221.63(c)(1)(iv) and (c)(2)(iv). The Secretary may request periodic reports to be submitted in order to assure that the facilities and equipment are properly cared for and maintained.

(20 U.S.C. 639, 640; 34 CFR 221.63)

SECTION 4.2 *Disposal or transfer of ownership of federally owned school facilities.*

The Secretary, upon receipt of a written request from a local educational agency in which school facilities have been provided under section 9 or 10 of the Act, may make arrangements to transfer ownership of such agency in accordance with § 221.65 of the regulations.

(20 U.S.C. 639, 640(b); 34 CFR 221.64, 221.65)

[40 FR 16019, Apr. 8, 1975. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

Subpart A—Scope and Definitions

Sec.
222.1 Scope.
222.3 Definitions.

Subpart B—Applications

222.10 Applications.
222.11 Final date for filing applications.
222.12 Applications under sections 2, 3, and 4 received after deadline not considered for payment.
222.13 Notification to applicants.
222.14 Assurances and parental participation with respect to Indian children for applications under section 3.
222.16 Civil rights.

Subpart C—Payments

222.20 Changes in boundaries, classification, and governing authority of applicants.
222.21 Payments under section 3 when percentage eligibility requirement is not met.
222.22 Entitlements under section 3(e).
222.23 Payments under section 4(a).
222.24 Election under section 4(c).

Sec.
222.25 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.
222.26 [Reserved]
222.27 Adjustments to payments related to special savings clauses under Pub. L. 93-380.

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rate

222.30 Determination of generally comparable local educational agencies.
222.31 Computation of local contribution rate.
222.32 Increase in or special local contribution rate.

Subpart E—Records and Reports Required by the Secretary

222.40 Records and reports required of applicants.
222.41 Final reports by applicants under sections 2, 3, and 4.
222.42 Retention of records.
222.43 Reports from other Federal agencies.

Subpart F—Arrangements Under Section 6 of the Act

222.50 Arrangements under section 6(a).
222.51 Arrangements under section 6(b).
222.52 Arrangements under section 6(c).
222.53 Proposal for arrangements under section 6.
222.54 Determinations by the Secretary pursuant to section 6.
222.55 Notice of Secretary's action.
222.56 Arrangements under section 402(a).
222.57 Expenditures.
222.58 Reports.
222.59 Termination of arrangements.

Subpart G—Determinations Under Section 5(d)(1) and (2)

222.60 Scope and purpose.
222.61 Treatment of State aid programs in general.
222.62 General qualifying standard for State aid programs.
222.63 Disparity standard.
222.64 Wealth neutrality test.
222.65 Consideration for exceptional circumstances.
222.66 Proportion of funds that may be taken into consideration.
222.67 Assurances in applications.
222.68 Submissions and consultations.
222.69 Notice and opportunity for hearing.

Subpart H—Handicapped Children and Children With Specific Learning Disabilities

Sec.
222.70 General.
222.71 Eligibility requirements.
222.72 Application procedures.
222.73 Assurances and certifications.
222.74 Use of section 3(d)(2)(C) funds.
222.75 Per pupil expenditure requirement.
222.76 Relation to section 5(d)(2) of the Act.
222.77 Children in private schools.
222.78 Individualized educational programs and parental involvement.
222.79 Applicability of other statutory and regulatory requirements.

Subpart I—Entitlements Related to Low-Rent Public Housing

222.80 General.
222.81 Use of section 5(e) funds.
222.82 Application procedures.
222.83 Monitoring.
222.84 Needs assessment.
222.85 Project description, size, scope, and quality.
222.86 Measurement of educational achievement and evaluation of programs.
222.87 Parent advisory councils.
222.88 Participation of private school children.
222.89 Applicability of other statutory and regulatory requirements.
APPENDIX

AUTHORITY: Pub. L. 81-874, as amended, 64 Stat. 1100 (20 U.S.C. 236-244), unless otherwise noted.

SOURCE: 40 FR 16032, Apr. 8, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Scope and Definitions

§ 222.1 Scope.

The regulations in this part govern the provision of financial assistance and the making of arrangements under the Act with regard to local educational agencies in areas affected by Federal activities.

(20 U.S.C. 242(b))

§ 222.3 Definitions.

As used in this part:

(a) "Act" means Titles I (except section 7 thereof) and IV of Pub. L. 874, 81st Congress (64 Stat. 1100 (20 U.S.C. 236-244)), as amended.

(b) "Applicant" means any local educational agency which files an application for financial assistance under sections 2, 3, or 4 of the Act and the regulations in this part, but does not include departments or agencies proposing arrangements under section 6 of the Act.

(20 U.S.C. 240(a))

(c) "Application" means Form RSF-1, "Application for Financial Assistance for Current Expenditures for Public Schools in Areas Affected by Federal Activities" properly completed and executed, including amendments thereto, and, to the extent indicated by the applicant, any document or documents in support thereof, filed by or on behalf of an applicant requesting financial assistance under the Act and these regulations.

(20 U.S.C. 240(a), 242(b))

(d) "Arrangements" means an agreement entered into between the Secretary and a local educational agency or a Federal department or agency for the provision of free public education under section 6 of the Act.

(20 U.S.C 241(a))

(e) "Average daily attendance of federally-connected pupils" in each pertinent subcategory of federally-connected children under sections 3(a), 3(b), and 4(a) means the number determined in the manner described in this paragraph.

(1) At some specific date after the third day of the legal school session of the regular school year and before the cutoff date for filing Form RSF-1, a membership count of all pupils claimed in the various federally-connected subcategories must be made either by:

(i) Conducting a parent-pupil survey to determine the parent's employment on Federal property or active duty assignment in the uniformed services and the child's residence on Federal property; or by

(ii) Obtaining certifications from the various employers and the appropriate housing officials as to the employment of the parents of the children claimed or residence of the children on the specific date involved. The membership count of all pupils made as of this specific date constitutes the official membership report of the applicant local educational agency for that date.

(2) The average daily attendance (hereinafter referred to as ADA) of federally-connected pupils shall then be obtained in the following manner.

(i) For the purposes of the application ED Form 4019 (Form RSF-1), the membership in each federally-connected subcategory shall be multiplied by the ratio of total ADA on the date of the membership count to the total membership as reported in the official membership and ADA report of the applicant district for the reporting period; and

(ii) For the purposes of the final report ED Form 4037 (Form RSF-3) the membership in each federally-connected subcategory shall be multiplied by the ratio of the total ADA for the period July 1 to the following June 30 to the total membership. This total ADA may include ADA based upon free public education provided in summer school as determined in accordance with State law.

(3) At the option of the applicant, a second membership count may be made. Procedures for a second membership count are set out in paragraph (f) of this section.

(20 U.S.C. 283(2)(b), 239(a), 244(10))

(f) "Average daily attendance of federally-connected pupils when determined by two counts of all pupils" means the number determined in the manner described in this paragraph.

(1) A first count of membership of each subcategory of federally-connected children must be made as described in paragraph (e) of this section. If conducted, a second count of membership must be made during the last quarter of the regular school year and uniformly for the entire local educational agency.

(2) A membership count of all pupils, made as of the same dates as the counts of federally-connected children, constitutes the official membership report of the applicant school district for those dates.

(3) Add the total membership for each count and divide the sum by two

to compute an average total membership for both counts.

(4) Add the total federally-connected membership for each subcategory for both counts and divide the sum by two to compute an average federally-connected membership for each subcategory.

(5) Divide the total ADA for the period July 1 to the following June 30 by the average total membership obtained in paragraph (3) to obtain the ratio of ADA to membership.

(6) For the purposes of the final report ED Form 4037 (Form RSF-3), the average federally-connected membership for each subcategory obtained in paragraph (f)(4) of this section shall be multiplied by the ratio of the total ADA to the average total membership. This total ADA may include ADA based upon free public education provided in summer school as determined in accordance with State law.

(20 U.S.C. 238(a)(b), 239(a), 244(10))

(g) "Entitlement" means the amount of assistance which an applicant would receive under the formula prescribed under sections 2, 3, or 4 of the Act if the appropriations for a fiscal year were adequate to pay all claims.

(20 U.S.C. 240(a), (b), (c))

(h) "Federal property" is used in this part as defined in the Act at 20 U.S.C. 244(1). For the purpose of this definition:

(1) All property of the United States which was transferred to the United States Postal Service and which was, prior to such transfer, treated as Federal property for the purposes of the Act, shall continue to be treated as Federal property for such purpose for two years beyond the end of the fiscal year in which such transfer occurred.

(20 U.S.C. 244(1); Pub. L. 92-277 (April 24, 1972), 86 Stat. 124)

(2) Federal ships which are owned by the United States and whose home ports are located on Federal property are Federal property.

(20 U.S.C. 244(1))

(i) "Financial assistance" means the payment made to an applicant school district under section 5(b) of the Act by the Department of the Treasury upon authorization of the Secretary.

(20 U.S.C. 240(b))

(j) "Parent-pupil survey" means a questionnaire provided by the applicant and which is to be filled out by a parent in order to substantiate residence or employment on Federal property. Such survey must include:

(1) Pupil-enrollment information (this information may also be obtained from school records) including:

(i) Name of pupil;

(ii) Date of birth; and

(iii) Name of public school, grade, and teacher.

(2) Pupil-residence and parent-employment information, including:

(i) Address on pupil residence (including the name of the Federal facility if such residence is on Federal property); and

(ii) Name (as it appears on employer's payroll record) of parent (mother, father, legal guardian or other person standing in loco parentis) who is employed on Federal property and with whom such pupil resides, unless the parent is a member of the uniformed services on active duty;

(iii) Name and address of Federal property on which the parent is employed unless the parent is a member of the uniformed services on active duty;

(iv) If the parent is a member of the uniformed services on active duty, the name, the rank, serial number, and branch of service of such parent;

(v) If the parent is a civilian employed on a Federal vessel, the name of vessel, hull number, and name of controlling agency must be obtained;

(vi) The signature of the parent supplying the information and the date of such signature must be obtained; and

(vii) The name and address of the employer (unless parent is a member of the uniformed services on active duty).

(3) Only in unusual circumstances may partially completed survey forms or survey forms which are signed by a person other than parent or person standing in loco parentis be accepted on membership survey forms. In such instances the survey form must show why the parent did not sign, and

when, how, and from whom the residence and employment information was obtained.

(20 U.S.C. 240(a)(1))

(k) "Prorated entitlement" means the amount of financial assistance which an applicant will receive under the adjustment formula prescribed in the Act (including any other pertinent modifications or amendments), if the appropriations for a fiscal year are inadequate to pay all claims under sections 2, 3, 4, or 6 of the Act.

(20 U.S.C. 240(c))

(l) "Revenues derived from local sources" include the following:

(1) Tax funds derived from real estate;

(i) Such tax funds derived from real estate include:

(*a*) Locally received funds which are derived from local taxation of real property;

(*b*) Tax funds which are received on account of Wherry-Spence housing projects (12 U.S.C. 1702, et seq.) located on private property; and

(*c*) All local real property tax funds which are received from either the county or the State, serving as a collecting agency, and which are returned to the local educational agency for expenditure by that agency;

(ii) Such tax funds derived from real estate do not include:

(*a*) Any payments under this Act or the Johnson-O'Malley Act (25 U.S.C. 452);

(*b*) Tax payments which are received on account of Wherry-Spence housing projects located on federally owned property; or

(*c*) Local real property tax funds which are received by the State and distributed to local educational agencies on a per-pupil or formula basis; or

(2) Taxes or receipts which are received from the county, and any other local tax or miscellaneous receipts.

(20 U.S.C. 238(d)(2); H. Rept. No. 22-87, 81st Cong., 2d Sess., (June 30, 1950), 12-15)

(m) "State aid" with respect to free public education means any contribution, no repayment of which is expected, made by a State to or on behalf of a local educational agency within the State for the support of free public elementary and secondary education. Such assistance does not include payments by a State to or on behalf of a local educational agency which are made as a result of a "major disaster" as such term is used in section 7 of Pub. L. 81-874.

(20 U.S.C. 240(d)(1))

(n) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Science Services Administration, and Public Health Service.

(20 U.S.C. 238(a) and (b), 80 U.S.C. 1121, 82 U.S.C. 1314)

(o) "Working on Federal property" means employed on Federal property, as defined in the Act and the regulations in this part. Such term includes the following:

(1) A person who is employed (whether a regular employee or self-employed) either part time or full time in lumbering, farming, or grazing operations which are carried out entirely or partly on Federal property if, during such period, he spends a greater part of his working time on the Federal property than on the non-Federal property;

(2) A person who lives on Indian lands which are Federal property, as defined in the Act and these regulations, and who is not regularly employed on non-Federal property; and

(3) A portion, to be determined by the Secretary, of the persons working on commingled Federal and non-Federal properties other than those covered by paragraph (o)(1) of this section.

(p) "County" means, for the purpose of computing entitlement under section 3 of the Act and payments under section 5 of the Act as well as for the purpose of this part, those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties, subject to the following qualifications:

(1) Where a municipality or other political subdivision of a State is not treated as part of a county by the Secretary of Commerce in compiling and reporting data regarding counties, those municipalities and other politi-

cal subdivisions are regarded as separate counties; and

(2) Where a local educational agency is situated in more than one county, the term "county" in the phrase "in the county in which the school district of such agency is located" includes any county in which the local educational agency is situated in whole or in part.

(20 U.S.C. 238(a)(b) and note; 20 U.S.C. 244(11); 88 Stat. 534)

(q) "School year" as used in this part, means the period between July 1 of one year and June 30 of the subsequent year.

(20 U.S.C. 238(a) and (b), 244(1); H.R. No. 703, 83d Cong., 1st Sess., (July 3, 1953), 26, H.R. 1532, 85th Cong., 2d Sess., (March 19, 1958), 51 20 U.S.C. 242)

[40 FR 16032, Apr. 8, 1975, as amended at 43 FR 19129, May 3, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Applications

§ 222.10 Applications.

Any local educational agency seeking financial assistance under sections 2, 3, or 4 of the Act shall, as a condition of entitlement, file with the Secretary an application for financial assistance. Such application shall be transmitted through the appropriate State educational agency, on Form RSF-1 (entitled "Application for School Assistance in Federally Affected Areas (Title I of Pub. L. 874)") and shall show the basis for entitlement under the Act and regulations. Copies of all application forms may be obtained from that State educational agency which serves the applicant local educational agency.

(20 U.S.C. 240(a))

§ 222.11 Final date for filing applications.

(a) Except as otherwise provided in this section, the final date for filing an application for financial assistance under sections 2, 3, or 4 of the Act shall be January 31st of the fiscal year for which such assistance is sought; except that, whenever such a final date falls on a Saturday, Sunday, or other Federal holiday, the final date for filing an application shall be the next succeeding business day. Each application must be received by the Secretary on or before the final filing date, after transmittal through and certification by the State educational agency. The applicant is responsible for obtaining the certification of the State educational agency and for securing a timely transmittal of the application to the Secretary. In order to give the State educational agency time in which it may process the application, the applicant should file its application with the State educational agency by January 2 of the fiscal year for which assistance is sought.

(b) With respect to an applicant whose eligibility for financial assistance under the Act is established during the fiscal year by initiation or reactivation of an activity of the United States, or by the acquisition of Federal property, the filing date shall be extended 60 days beyond the date of such initiation, reactivation, or acquisition.

(c) With respect to an applicant whose eligibility for financial assistance is established pursuant to an amendment to the Act which is enacted during the fiscal year for which assistance is sought, the filing date shall be extended 60 days beyond the effective date of such amendment.

(d) With respect to a local educational agency which, during the fiscal year for which assistance is sought, acquired administrative control and direction of free public education in all or any portion of an area of a previously existing local educational agency (under the circumstances described in § 222.20(b)), the filing date of an application under sections 3 and 4 of the Act shall be extended to the extent necessary to allow 60 days beyond the effective date of such change in district organization.

(e) Where an application is filed directly with the Secretary on or before the applicable filing date and a copy is filed with the State educational agency on or before the applicable filing date, then the application will, for good cause shown, be considered to be timely filed if, within fifteen days after the applicable filing date, the applicant obtains and files with the Secretary the approval, verification, and certification of the application by the State educational agency.

(f) A timely filed application may be amended to apply for additional or alternative financial assistance based upon (1) the initiation or reactivation of a Federal activity, (2) the acquisition of property by the United States after the application was initially filed, (3) an amendment to the Act after the application was filed, or (4) a determination of the Secretary first communicated to the applicant that property is or is not "Federal property" under section 403(1) of the Act. Such amendment must be filed within 60 days of such occurrence or communication and no later than on or before the 30th day of September following the fiscal year for which payment is requested.

(g) A timely filed application may be amended to apply for additional or alternative financial assistance under sections 3(d)(2)(B), 3(d)(3)(B)(ii), 3(e) or section 4(d) of the Act, if the amendment is:

(1) Filed no later than September 30 of the fiscal year for which assistance is sought; and

(2) Accompanied by a detailed statement setting forth the basis of the claim and a justification for the requested entitlement.

(20 U.S.C. 240(a)(1))

[40 FR 16032, Apr. 8, 1975, as amended at 43 FR 19129, May 3, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 222.12 Applications under sections 2, 3, and 4 received after deadline not considered for payment.

Applications under sections 2, 3, and 4 of the Act which are received by the Secretary after the applicable filing date prescribed by § 222.11 will not be approved.

(20 U.S.C. 240(a))

§ 222.13 Notification to applicants.

Each applicant will be notified of the results of the review of its application under one or more of the sections or subsections of the Act, and the estimated amount of the payment, if any, to be made.

(20 U.S.C. 240)

§ 222.14 Assurances and parental participation with respect to Indian children for applications under section 3.

(a) Each application for payment under section 3(a) or section 3(b) of the Act which is based upon children who reside on or reside with a parent employed on Indian lands (as included within the definition of Federal property under section 403(1)(A) of the Act) shall set forth adequate assurance that Indian children will participate on an equitable basis in the school program of the applicant local educational agency.

(Pub. L. 92-318, section 411(a); (20 U.S.C. 240(a)(2))

(b) Each application based upon children as described in paragraph (a) of this section shall:

(1) Set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated in consultation with, and with the involvement of parents of, the children to be served by such programs and projects. Applicants must submit a brief statement describing such policies and procedures with each application;

(2) Be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

(3) Set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public. Applicants must submit a brief statement describing such policies and procedures with each application.

(c) It shall be the responsibility of the applicant local educational agency to provide to the parents of such children:

(1) Opportunity to make recommendations to the local educational agency concerning the needs of the Indian children;

(2) Opportunity to consult with the local educational agency concerning the ways in which such parents can assist their children in realizing the benefits to be derived from the educational program of the local educational agency; and

(3) Opportunity to present their views to the appropriate school personnel concerning the educational program and parental participation.

(20 U.S.C. 1231d; Pub. L. 92-318, section 411(a))

§ 222.16 Civil rights.

(a) Federal financial assistance is subject to the regulations in Part 100 of this title, issued by the Secretary and approved by the President to effectuate the provisions of Title VI of the Civil Rights Act of 1964. (Pub. L. 88-352)

(42 U.S.C. 2000d)

(b) Federal financial assistance is also subject to the provisions of Title IX of the Education Amendments of 1972 (prohibition of sex discrimination), and any regulations issued thereunder.

(Pub. L. 92-318, Title IX)

Subpart C—Payments

Source: 43 FR 19130, May 3, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

§ 222.20 Changes in boundaries, classification, and governing authority of applicants.

(a) If the applicant is a party to any merger, consolidation, annexation, deconsolidation, or other similar action which may affect its boundaries, identity, governing authority, classification, or control, it must notify the Secretary as soon as practicable of the effective date of that action, its extent and character, and the legal authority under which the action was or is to be effected. This notification must include the following information:

(1) The effective date of change in boundaries or organization, for all purposes, including administrative and fiscal;

(2) Identification by name, district, number and address of all former agencies involved and the application number for each applicant involved in any change;

(3) A statement describing the specific type of change, with a citation of the section or sections of the State law under which the change was accomplished;

(4) The legal name of the resulting successor agency (even if the name and legal classification of the applicant agency are retained after a change);

(5) A statement whether assets and liabilities of the former agency or agencies have been transferred to the successor agency, or whether a settlement agreement has been made and, if so, the effective date of this action;

(6) A statement whether a new board of education has or will assume control and management of the successor agency and, if so, the effective date; and

(7) The name and address of the authorized representative for purposes of the Act, who shall be duly designated by the governing body of the successor agency. Evidence of this official designation must be submitted in the form of a copy of the resolution duly recorded in the minutes of the proceedings of the governing body.

(b) A local educational agency is not entitled to any payment on the basis of an application under sections 3 or 4 of the Act (except as provided in paragraph (d) of this section) if:

(1) The change in the organization of the local educational agency is effective within the school year covered by the application and occurs prior to the close of the regular school term of that year; and

(2) The local educational agency thereby ceases to be a legally consituted local educational agency.

(c) Except as provided in § 222.21(d), a local educational agency which assumes administrative control and direction of free public education in all or a portion of the area of the previously existing applicant, may (if it is not already an applicant under the section involved or if it files an application in accordance with § 222.11(d) have its entitlement under section 3(d)(1) or 4(a)(1) of the Act for the entire fiscal year determined by either of the following, whichever is more favorable to it:

(1) On the basis of the entire area under its jurisdiction on the last day of that year; or

(2) On the basis only of the area acquired by the local educational agency from the previously existing local educational agency, except that the latter basis may only be used:

(i) For an application under section 3 of the Act for which a favorable finding has been made (or would have been made in due course but for the change in district organization) on the basis of the estimates required under section 3([illegible])(1) of the Act with respect to the previously existing agency; and

(ii) For an application under section 4 of the Act for which such a favorable finding has been made (or would have been made in due course but for the change in district organization) under section 4(a)(1).

(d) Any payment made before the Secretary considered the change in the organization of the local educational agency must be repaid to the United States except to the extent that:

(1) It is accounted for by the adjustments made in the entitlements of any successor applicant local educational agency under either paragraph (c) of this section or paragraph (d) of § 222.21; and

(2) Any balance remaining or the entire payment made is found by the Secretary not to be in excess of the amount to which the pre-existing local educational agency would have become entitled on the basis of the number of federally-connected children:

(i) Who were not covered by any other application; and

(ii) To whom free public education was provided by the previously existing local educational agency or by any successor non-applicant local educational agency.

(20 U.S.C. 237(c), 244(6)(A))

§ 222.21 Payments under section 3 when percentage eligibility requirement is not met.

(a) Under the exception provided in section 3(c)(2)(A)(ii) of the Act, an applicant continues to be eligible for payment under the Act, even if it fails to meet the 3 percent eligibility requirement of section 3(c)(1)(B) of the Act, for two years following any fiscal year in which it: (1) Was determined to be eligible under that requirement and (2) received a net payment under section 3.

(b) The number of children determined for the purpose of establishing the amount of entitlement under section 3 in the second fiscal year of the two-year period specified in paragraph (a) may not exceed 50 percent of the number of children in each federally-connected subcategory for the last fiscal year during which the applicant met the eligibility requirement of section 3(c)(1)(B) of the Act.

(c) If an applicant local educational agency was not in existence in either one or both of the two fiscal years preceding that for which application is made, that agency may nevertheless receive the benefit of the provisions of paragraph (a) of this section if that agency is:

(1) Composed only of territory which was formerly included in a predecessor agency or agencies which were determined to have met the percentage eligibility requirement contained in section 3(c)(1)(B) of the Act for the fiscal year two years or one year before the year for which application is made; and

(2) The predecessor agency or agencies received a net payment under section 3 of the Act for the fiscal year two years or immediately before that for which application is made.

(20 U.S.C. 238(c)(2)(A)(ii))

(d) If any local educational agency which had filed an application in a timely manner under section 3 of the Act and was entitled to payment by virtue of paragraph (a) or (c) of this section ceases to be a legally constituted local educational agency as a result of a district reorganization which is effective before the close of the regular school term within the fiscal year covered by the application (thereby becoming subject to the provisions of § 222.20(b)), a successor local educational agency which:

(1) Files an application in accordance with § 222.11(d) (unless already an applicant under section 3); and

(2) Assumes administrative control and direction of free public education in all or a portion of the area of the

previously existing applicant before the close of the applicant's regular school term, may have its application processed on the basis of the:

(i) Area acquired from the previously existing local educational agency, and

(ii) Rights of that agency, without regard to the 3 percent requirement, subject to appropriate adjustment on account of payments made to the previously existing local educational agency.

(20 U.S.C. 238, 244(6)(A))

(f) Section 305(b)(2)(A) of Pub. L. 93-380 governs the case of any applicant that was determined to have met the 3 percent eligibility requirement before July 1, 1975, but which fails to meet this requirement in any school year ending before July 1, 1977.

(88 Stat. 553; Sen. Rep. No. 93-763, 205)

§ 222.22 Entitlements under section 3(e).

(a) An applicant eligible under section 3(e) of the Act is entitled to receive, for the fiscal year in which eligibility is determined and for any of the three succeeding fiscal years, not less than 90 percent of the amount to which the applicant was entitled under section 3 of the Act for the preceding fiscal year.

(b) For an applicant to be eligible under section 3(e) of the Act:

(1) The number of children determined with respect to an applicant under sections 3(a) and 3(b) of this Act must be less than 90 percent of the number of children determined under those sections of the Act for the applicant during the preceding fiscal year. In making that determination, the Secretary shall divide the current fiscal year's sections 3(a) and 3(b) ADA by the preceding fiscal year's ADA for those sections.

(2) There must have been a substantial decrease in the number of children determined under sections 3(a) and 3(b) of the Act resulting from a decrease or cessation of Federal activities, in the State within which the applicant is located, during the year for which an application is filed. A decrease is substantial when it equals 3 percent of the current fiscal year's total ADA and at least 10 in ADA.

(3) The applicant must submit a statement to the Secretary identifying the particular decrease in or cessation of Federal activities; the statement must be certified as to its accuracy by an authorized official of the Federal agency associated with the conduct of the affected activities.

(c) Any section 3(e) payments to an applicant are considered for all other purposes as payments attributable to determinations of children under section 3(b)(2)(A) of the Act.

(20 U.S.C. 238(e))

§ 222.23 Payments under section 4(a).

(a) Payment under section 4(a) is intended to compensate a local educational agency for sudden and substantial increases in pupils whose attendance in school during the current school year is a direct result of Federal activities. This payment may be made only when the Secretary determines that, although the applicant has made a reasonable tax effort, the education of the increased number of children places a substantial and continuing financial burden on the applicant, and the applicant cannot secure funds from other sources adequate to provide these children a level of education equivalent to that maintained in generally comparable school districts in the same State.

(b) In the first fiscal year following payment under section 4(a), a payment not to exceed 50 percent of the entitlement in this preceding year under section 4(a) will be made, subject to the availability of funds. The payment may not include any entitlement due to those increases in section 3(a) or 3(b) of the preceding year for which payment was made.

(20 U.S.C. 239(a))

(c) No payments will be made under section 4(a) of the Act unless:

(1) The increase in ADA of federally-connected pupils in the current year over the ADA of those children in the preceding year is at least equal to 5 percent of non-Federal ADA in the preceding year, and

(2) The increase in the current total ADA over the preceding year's total

ADA is at least 5 percent of the preceding year's total ADA.

(20 U.S.C. 293(a)(1))

(d) No payments will be made under section 4(a) of the Act unless the parents of the pupils entering the schools of the local educational agency for the first time during the current school year enter the area of that agency to accept employment because of Federal activities on or after February 1 of the preceding year. An increase in activities of the United States for the purpose of section 4(a) of the Act may be found to have occurred in circumstances which include the following:

(1) Activities resulting from Federal contracts in the current fiscal year when the number of employees engaged in the Federal activity increased over the preceding fiscal year; and

(2) Activities where production resulting from Federal contracts changed so as to require employees with new skills for this production; therefore, new employees migrated into the area of the local educational agency.

(e) Activities of those persons not employed by the United States or by a contractor of the United States shall not be considered to be a direct result of activities of the United States for the purposes of section 4(a).

(20 U.S.C. 239(a)(1); 83-703, House Report No. 703, July 3, 1953, 12)

§ 222.24 Election under section 4(c).

Under section 4(c) of the Act, a local educational agency may elect to count for eligibility and payment under section 4(a) of the Act the entire increase in the number of children who are:

(a) In average daily attendance at its schools during the school year; and

(b) Otherwise eligible to be counted under section 3 of the Act. This election may be made only if an application under section 4 is filed in a timely manner on Form RSF-1 in accordance with § 222.11.

(20 U.S.C. 239(c))

§ 222.25 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.

(a) Section 5(c) of the Act determines the portions of entitlements that will be allocated and paid when an appropriation for a fiscal year is not enough to fund in full all entitlements under sections 2, 3, and 4. It establishes funding priorities as follows:

(1) Before any other allocation is made, funds will be allocated to provide 100 percent of entitlements under section 2 and 25 percent of entitlements under section 3.

(2) Funds will be allocated to provide varying percentages (ranging from 28 to 75 percent) of entitlements under section 3; the varying percentages, as provided in section 5(c)(2) of the Act, are as follows:

(i) Seventy-five (75) percent for section 3(a) children in local educational agencies where those children comprise 25 percent or more of the total number of children in average daily attendance.

(ii) Sixty-three (63) percent for section 3(a)(1) (children residing on Federal property with a parent employed on Federal property in the same State as the local educational agency),

(iii) Sixty-five (65) percent for section 3(a)(2) (children who reside on Federal property and have a parent in one of the uniformed services or children residing on Indian lands),

(iv) Thirty-two (32) percent for section 3(b)(1) (children residing on Federal property),

(v) Thirty-two (32) percent for section 3(b)(2)(A) (children residing with a parent employed on Federal property within the county of the local educational agency),

(vi) Twenty-eight (28) percent for section 3(b)(2)(B) (children residing with a parent employed on Federal property outside the county but in the same State of the local educational agency), and

(vii) Thirty-five (35) percent for section 3(b)(3) (children with a parent in one of the uniformed services).

However, these allocations are subject to two restrictions. First, none of these allocations will be made unless all of them can be made. Second, entitlements attributable to children residing on, or residing with a parent employed on, low-rent public housing property (described in section 403(1)(C) of the Act) are excluded from these allocations under section 5(c)(2).

(3) Remaining portions of entitlements under section 3 and all entitlements under section 4 will be allocated on a prorated basis to the extent permitted by available funds.

(b) Any part of an entitlement determined under section 3 of the Act attributable in whole or in part to children residing on, or residing with a parent employed on low-rent public housing property, is considered to be attributable in its entirety to these children. Thus, payments for entitlements based in whole or in part on low-rent public housing children are to be excluded in their entirety under section 5(c)(2).

(20 U.S.C. 240(c)(e); 20 U.S.C. 244(1)(c); Sen. Rep. No. 93-1026, 162 (1974))

§ 222.26 [Reserved]

§ 222.27 Adjustments to payments related to special savings clauses under Pub. L. 93-380.

(a) Special savings clauses in section 305(b)(2) of Pub. L. 93-380 guarantee, to the extent of available appropriations, an overall payment to eligible applicant local educational agencies. These special savings clauses do not create separate entitlements to be added individually to the basic Pub. L. 81-874 payment. The amount of payment under this section is computed by subtracting any payment under section 3 of the Act from the overall payment that is guaranteed by section 305(b)(2) of Pub. L. 93-380. Any remainder is then allocated among the savings clauses for which the applicant is eligible in whatever order the Secretary considers appropriate.

(b) *Section 305(b)(2)(A) of Pub. L. 93-380.* (1) The first sentence of clause (A)(i) of section 305(b)(2) insures that any local educational agency which is entitled to receive a payment under section 3 of the Act for a current year will not receive less than 80 percent or 90 percent, as determined below, of the payment that was received under section 3 for the preceding year.

(i) The guarantee of 90 percent applies to any local educational agency which was eligible for a payment under section 3 of the Act for fiscal year 1973 that was equal to 10 percent or more of the agency's total current expenditures for fiscal year 1973.

(ii) The guarantee of 80 percent applies to any other local educational agency entitled to receive a payment under section 3 for a current year.

(iii) If an applicant local educational agency was not in existence in fiscal year 1973, it may nevertheless receive the 90 percent guarantee if:

(A) It is composed only of territory which was the entire territory of a predecessor agency or agencies which received a payment under section 3 for fiscal year 1973 and met the 10 percent eligibility requirement; and

(B) Either the applicant local educational agency or all of the predecessor agencies comprising it received a net payment under section 3 for the preceding fiscal year that determines the amount of the guarantee.

(iv) If an applicant local educational agency was not in existence in the preceding fiscal year, it may nevertheless receive the 80 percent guarantee if it is composed only of territory which was formerly included in a predecessor agency or agencies which met the section 3 eligibility requirements and received a net payment under that section for the preceding fiscal year.

(2) The second sentence of clause (A)(i) of section 305(b)(2) is effective only in fiscal years 1976 and 1977. It permits an applicant local educational agency to be eligible for payment under section 3 of the Act, even if the agency fails to meet the 3 percent eligibility requirement of section 3(c)(1)(B) of the Act, for two years after the fiscal year the agency last met that requirement and received a payment under section 3. For the second year of payment under this provision, payment may not exceed 50 percent of the payment that was received for the last fiscal year in which the percentage eligibility requirement was met.

(i) Applicants subject to the maximum payment limitations under the second sentence of clause (A)(i) may not receive more than that maximum payment under the guaranteed payment provisions in the first sentence of clause (A)(i).

(ii) Payments to eligible applicants based on the second sentence of section 305(b)(2)(A)(i) of Pub. L. 93-380 are not subject to the special funding requirement of section 305(b)(2)(A)(ii) of the Act.

(88 Stat. 553; Sen. Rep. 93-1026, 163-164; Sen. Rep. No. 93-763, 57)

(c) *Section 305(b)(2)(B) of Pub. L. 93-380.*

(1) Clause (B) of section 305(b)(2) guarantees a level of payment to applicants which have suffered a decrease in section 3 ADA as a direct result of decreases in or cessations of Federal activities on military installations that were announced after April 16, 1973. The level of payment for the first year of eligibility and each succeeding year for which an application is filed is 90 percent of the agency's entitlement under section 3 for the preceding year.

(i) For the purposes of this clause, the term "military installation" means a facility, camp, or base operated by or under the jurisdiction of the Armed Forces of the United States.

(ii) The announcement of a decrease or cessation of Federal activities must be an official announcement or order issued by the Federal government.

(2) No payment will be made under clause (B) unless:

(i) The decrease in section 3 ADA is at least 10 percent for any one of the following:

(A) Fiscal year 1974 section 3 ADA compared to fiscal year 1973 section 3 ADA, or

(B) Fiscal year 1975 section 3 ADA compared to fiscal year 1974 section 3 ADA, or

(C) Fiscal year 1975 section 3 ADA compared to fiscal year 1973 section 3 ADA.

(ii) The decrease in section 3 ADA was a direct result of a decrease in or cessation of Federal activities on a military installation, and

(iii) The decrease in or cessation of Federal activities was due to a specific announcement issued by the Federal government on or after April 16, 1973.

(3) In order to receive a payment under clause (B), an applicant must provide to the Secretary whatever data and information that the Secretary considers necessary and appropriate to establish the basis for payment.

(4) If an applicant local educational agency was not in existence in the preceding fiscal year, it may nevertheless receive the guarantee under clause (B) if it is composed only of territory which was formerly included in a predecessor agency or agencies which were determined eligible under clause (B) and received a net payment under either section 3 or clause (B) for the preceding fiscal year.

(88 Stat. 534; Sen. Rep. No. 93-763, 57-58, 206-207 (1974))

(d) *Section 305(b)(2)(C) of Pub. L. 93-380.*

(1) Clause (C) is designed to offset the immediate reduction in payments affected by the amendments to section 3(b) of the Act under Pub. L. 93-380. Those amendments eliminated payments based on children residing with a parent employed on property which is outside the State of the applicant and reduced payments for children residing with a parent employed on Federal property which is outside the county of the applicant but within the same State. Clause (C) guarantees that a payment for section 3(b) children will not be less than 90 percent of the amount the applicant received for section 3(b) children for the preceding fiscal year. The amount received for 3(b) children may have been received through 3(b) and the hold harmless benefits (section 305(b)(2) of Pub. L. 93-380).

(2) An applicant is eligible under Clause (C) if, during the year of application, the number of children who either:

(i) Reside with a parent employed on Federal property in a State other than the State in which the applicant is situated, but which is within reasonable commuting distance of the applicant, or

(ii) Reside with a parent employed on Federal property in a county outside the county in which the applicant is situated but within the same State, is equal to 10 percent or more of the number of children eligible under section 3(b) of the Act for that year.

In determining whether a particular Federal property is within "reasonable commuting distance", any prior determination for that property under Pub. L. 81-874 is controlling, unless the applicant presents new information justifying, in the Secretary's opinion, a reconsideration of that determination. Any Federal property located in the same State as the applicant is considered to be within reasonable commuting distance.

(3) If an applicant local educational agency meets the eligibility requirements for Clause (C) but was not in existence in the preceding fiscal year, it may receive the Clause (C) guarantee based on the net amount paid for the preceding year under section 3(b) to any predecessor agency or agencies; however, all of the territory of the predecessor agency or agencies must be part of the applicant local educational agency.

(88 Stat. 535; Sen. Rep. No. 93-763, 206-207 (1974))

(e) *Section 305(b)(2)(D) of Pub. L. 93-380.* (1) Payment under clause (D) is designed to compensate a local educational agency, which is eligible to receive a payment under section 3 of the Act, for having to share an appropriation with low-rent public housing entitlements.

(2) The amount of payment under clause (D) is computed by subtracting the applicant's payment for section 3 (as allocated under section 5(c) of the Act) from the amount of funds that the applicant would have received for section 3 had there been no payments under the current appropriation for low-rent public housing entitlements.

(88 Stat. 534, 535)

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rate

§ 222.30 Determination of generally comparable local educational agencies.

(a) In the case of a local educational agency in a State (other than Puerto Rico, Guam, American Samoa, the Virgin Islands, or any State in which a substantial portion of the land is an unorganized territory for which a State agency is the local educational agency or any State in which there is only one local educational agency) the Secretary will, after consultation with the State educational agency and the applicant, determine those local educational agencies which, in his judgment, are generally comparable to the applicant. For this purpose, the Secretary will, based upon the recommendation of the State educational agency, classify all local educational agencies in such State into groups of agencies generally comparable to one another. In recommending to the Secretary the classification of all local educational agencies in the State into generally comparable groups, the State educational agency shall initially establish proposed groups based upon legal classifications or justify the use of another factor as the principal factor. Unless the State educational agency can establish to the satisfaction of the Secretary that the consideration of additional factors will not result in greater comparability, division into further groups will be required. For the purposes of such further division, consideration shall be given to grade level, size as measured by total ADA, geographical size, density of population, industrialization, current revenues, aggregate value of property, percent of pupils transported, and any other relevant factors. In making its recommendations in that regard to the Secretary, the State educational agency will furnish such information as he may require, including information justifying the factors used and financial and attendance data necessary for the computation of per pupil expenditure and local contribution rate. On the basis of the recommendation by the State educational agency, the data furnished and other information which the Secretary may obtain, and applying the above criteria, he will determine whether all local educational agencies in the State shall be classified into generally comparable groups and, if so, will determine such groups. The pupil, financial, and other data specified above for the establishment of group rates for a fiscal year are to be submitted to the Secretary by the

State educational agency by September 1 of the fiscal year for which such rates will be applicable. These data must include the following:

(1) Number of local educational agencies in the State and in each proposed group;

(2) Total ADA for (i) all local educational agencies in the State and (ii) all local educational agencies in each proposed group;

(3) Total revenue receipts from local sources for current expenditures for (i) all local educational agencies in the State and (ii) all local educational agencies in each proposed group;

(4) Total revenue receipts from all sources (excluding monies received under Titles I, II, and III of the Elementary and Secondary Education Act of 1965) for current expense purposes for (i) all local educational agencies in the State and (ii) all local educational agencies in each proposed group;

(5) Total current expenditures (excluding expenditures from funds granted under Titles I, II, and III of the Elementary and Secondary Education Act of 1965) for (i) all local educational agencies in the State and (ii) all local educational agencies in each proposed group;

(6) Total current expenditures from local source revenues for (i) all educational agencies in the State and (ii) all local educational agencies in each proposed group;

(7) Average local contribution rate for the State and for each proposed group (paragraph (a)(6) of this section divided by paragraph (a)(2) of this section);

(8) Average current expenditure per pupil for the State and for each proposed group (paragraph (a)(5) of this section divided by paragraph (a)(2) of this section);

(9) Total number, the actual ADA, and the total allowable current expenditures for the second preceding fiscal year of children enrolled in grades 13 and 14 of all local educational agencies of States which offer these grades as free public education; and

(10) Estimated current fiscal year per pupil cost for the State (in those States in which an applicant requests an entitlement under section 3(d)(2)(B) or 4 of the Act). The actual per pupil costs shall be submitted to the Secretary at such time as they become available for each group.

(20 U.S.C. 238(d), 255(5))

(b) In a State for which group classifications of generally comparable school districts cannot, in the judgment of the Secretary, be appropriately established pursuant to paragraph (a) of this section,

(1) An applicant may submit to the Secretary in its application the names of districts (approximately five in number) in the State which it deems generally comparable to the local educational agency of the applicant (together with all other pertinent data requested in the application by the Secretary);

(2) The selection by the applicant of such local educational agencies shall be based upon the criteria set forth in paragraphs (a)(1) through (a)(10) of this section and shall be submitted through the State educational agency for review and comment. The Secretary's determination will be based upon such criteria and any other relevant factors. The financial, attendance, and other data of the selected local educational agencies must be sufficient to justify the selection of such local educational agencies as generally comparable and to determine the per pupil expenditures and the local contribution rates in such agencies. On the basis of the data furnished by the applicant, or information otherwise obtained, and applying the above criteria, the Secretary will select those local educational agencies which he determines to be generally comparable to the applicant. Such data must be submitted to the Secretary by the State educational agency for each local educational agency deemed to be generally comparable by September 1 of the fiscal year for which application is made. Data must include the following:

(i) Comparable local educational agency data for the second preceding fiscal year compiled by the State educational agency for use by applicants in completing the comparable district table in the application for the year of application;

(ii) ADA and the current expenditures for the second preceding fiscal year of children under twenty-one years of age who are enrolled in grades 13 and 14 for all local educational agencies in States that offer these grades as free public education; and

(iii) The estimated percent of change in per pupil cost for all local educational agencies in the State, in the aggregate, for the current fiscal year from the second preceding fiscal year, for each State wherein an applicant requests an entitlement under section 3(d)(2)(B) or section 4. Since comparable district data are submitted for the second year preceding, the estimated percent of increase factor for adjusting the per pupil cost to the current year will suffice for all purposes prior to the final payment. However, the State shall submit actual data to the Secretary for the purpose of computing final payments.

(20 U.S.C. 238(d), 244(5))

(c) The State agency shall not distribute group rate data or comparable district data to applicants for inclusion in applications prior to the receipt of notice that such data have been approved by the Secretary unless such data are clearly indicated as not yet having been so approved.

(20 U.S.C. 238(d), 244(5))

[40 FR 16032, Apr. 8, 1975, as amended at 43 FR 19133, May 3, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 222.31 Computation of local contribution rate.

The local contribution rate for an applicant for any fiscal year, except as otherwise specified in section 3(d) of the Act, will be computed by the Secretary in the following manner: He shall divide (a) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which he is making a computation, which the local educational agencies determined pursuant to § 222.30 to be generally comparable to that of the applicant, made from revenues derived from local sources by (b) the aggregate number of children in average daily attendance to whom such agencies provided free public education during such second preceding fiscal year. The local contribution rate shall be an amount equal to the quotient so obtained.

(20 U.S.C. 238(d))

§ 222.32 Increase in or special local contribution rate.

Notwithstanding the provision in § 222.31, if the current expenditures in the local educational agencies which the Secretary determined to be generally comparable to that of the applicant, in his judgment, are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain a level of education equivalent to that maintained in such other local educational agencies, then the Secretary will increase the local contribution rate for such an applicant by the amount he determines will compensate the applicant for the increase in current expenditures necessitated by such unusual geographical factors.

(20 U.S.C. 238(d))

Subpart E—Records and Reports Required by the Secretary

§ 222.40 Records and reports required of applicants.

(a) Each applicant shall maintain adequate written records to substantiate the Federal connection of pupils forming the basis for claim for financial assistance under sections 3 or 4 of the Act and shall make its records available to the Secretary upon request for the purpose of examination or audit.

(b) Each applicant shall submit such reports and information as the Secretary may reasonably require to determine the amount which the applicant may be paid under sections 2, 3, or 4 of the Act.

(20 U.S.C. 237, 238, 239, 240(a))

§ 222.41 Final reports by applicants under sections 2, 3, and 4.

(a) *Submission of final reports.* Each applicant shall for each fiscal year submit through the State educational agency on Form RSF-3 a final report to enable the Secretary to determine the amount to which the applicant is entitled under the Act. Copies of this form may be obtained from the appropriate State educational agency. Such final reports must be received by the Secretary on or before the 30th day of September following the fiscal year for which payment is requested: except that, whenever that date falls on a Saturday, Sunday, or Federal holiday, the final date for filing such final reports shall be the next succeeding business day. No certification of payment will be made after the applicable date for filing the final report for any fiscal year until the final report for that fiscal year has been received. Until all such reports for each year for which an applicant has received a payment have been received in proper form, no further payment to such applicant will be made under the Act for any subsequent year, unless the Secretary is satisfied from other information that the payments already made for the year for which a final report is lacking do not exceed the net amount due that applicant out of the appropriations for that year.

(b) *Failure to submit final report when appropriations are insufficient.* In addition to the limitation in paragraph (a) of this section for any year for which the Secretary is required to reduce the amounts which he certifies for payment because the funds appropriated are insufficient to pay in full the total amounts to which all applicants are entitled, unless the final report has been received by the Secretary on or before the applicable date for filing that final report, an applicant will not be entitled to any further payment out of funds available for that fiscal year. However, an applicant which has not received its regular initial payment for that year will have its application processed for that regular initial payment if a final report is received by the Secretary within 30 days after the applicable date for filing that final report.

(c) *Excessive entitlement.* The Secretary may, for a fiscal year for which no final report has been received, disallow any portion of the estimated entitlement which he may determine to be excessive on the basis of such information as is available. On the basis of all available information and whether or not such a report has been submitted after the applicable date for filing a final report following the close of the fiscal year, if an applicant is found to have received funds in excess of its entitlement or prorated portion of its entitlement for that fiscal year, that excess will be deducted in computing amounts subsequently certified for payment to the applicant for the current or subsequent fiscal year. Where no such payments are due, the applicant will be required to refund such excess to the United States through the Secretary.

(d) *Information submitted after deadline date.* No effect will be given to any report or information filed by the applicant after the applicable date for filing a final report to increase the amount computable on the basis of information filed on such date, except that, where clarifying information has been solicited in writing by the Secretary for the purpose of processing applications and final reports, such information may be given effect if received in writing by the Secretary.

(20 U.S.C. 240(a))

§ 222.42 Retention of records.

Local educational agencies receiving Federal payments under the Act are required to keep all records supporting the application until the completion of the administrative reviews which are regularly conducted by Federal agencies, or for three years following the fiscal year to which the application relates, whichever is earlier. The records involved which have been questioned should be further maintained until necessary adjustments have been made and the adjustments have been reviewed and cleared by the Federal agencies making such reviews.

(20 U.S.C. 240(a), 1232c(a))

§ 222.43 Reports from other Federal agencies.

Because of the requirements of section 2 and other provisions of the Act, the Secretary requires information with respect to certain payments made by other Federal departments and agencies for the same general purposes. Pursuant to the provisions of section 402(b) of the Act, other Federal departments and agencies which made expenditures (directly or otherwise) for, or in aid or supplementation of elementary and secondary education with respect to which an application has been filed with the Secretary, will be requested to file reports of commitments and expenditures for such purposes.

(20 U.S.C. 243(b))

Subpart F—Arrangements Under Section 6 of the Act

§ 222.50 Arrangements under section 6(a).

(a) Children who reside on Federal property shall be educated whenever possible in schools operated and controlled by local educational agencies (in accordance with State laws and standards).

(b) Insufficient funding under section 3 of the Act does not provide adequate justification for the making of arrangements under section 6(a) of the Act.

(c) In appropriate instances, when arrangements are made under section 6(a) of the Act, the provisions of section 6(f) shall be applied.

(d) To the extent practicable, the Secretary will limit such payments to that of the per pupil cost provided for children in comparable communities in the State. In order to establish such cost, the agency or department proposing the arrangements must submit the per pupil cost data for the following agencies:

(1) The local educational agency in which all or part of the Federal property where the children reside and for which a proposal is being submitted is located, or, if the Federal property is not located within a local educational agency, one of the local educational agencies contiguous to such Federal property;

(2) The local educational agency in which the capital city of the State is located; and

(3) From one to three additional local educational agencies thought to be generally comparable to that of the schools affected by the proposal.

(20 U.S.C. 241(a); House Report No. 81-2287, June 20, 1950, 22-23)

§ 222.51 Arrangements under section 6(b).

(a) When the Secretary makes arrangements under section 6(a) of the Act, the Secretary will under appropriate circumstances also make arrangements for those children for whose education he is authorized to make provisions under section 6(b) of the Act.

(b) Where a parent residing on the Federal property is transferred and the family moves from housing on Federal property to housing in an area adjacent to the Federal property, the dependent children will be permitted, as determined by the Secretary, to continue in attendance at the section 6 school for the remainder of the fiscal year provided that they continue to reside in such adjacent area. Where a parent is assigned to a Federal property on which there is a section 6 school and is assigned family housing on Federal property which the operating Federal agency certifies will be available for occupancy and will be occupied within ninety (90) days from the official reporting date of such parent, the dependent children may be permitted to attend the section 6 school while residing in an area adjacent to such Federal property for the portion of the ninety-day period as required by such residence.

(20 U.S.C. 241(b))

§ 222.52 Arrangements under section 6(c).

(a) When the Secretary makes arrangements under section 6(a) of the Act, the Secretary will under appropriate circumstances also make arrangements in connection therewith for those children for whose education he is authorized to make provision under section 6(c) of the Act.

(b) Children may be permitted to attend the section 6 schools under the provisions of section 6(c) upon submission of a proper proposal approved by the Secretary. Such children may include only:

(1) Children of a parent employed by the United States in Puerto Rico under the following conditions:

(i) The employing Federal agency has a policy of transfer or reassignment of personnel who occupy the same or similar grade, position, or classification of the parent and the parent is subject to such policy;

(ii) Such agency normally makes reassignments or transfers of such employees to places where English is the language of instruction in the school normally attended by children of Federal employees;

(2) Children of a federally employed parent if:

(i) Such parent, with his family, has been stationed in an area in which English is the language of instruction in the schools generally attended by the children of such employees;

(ii) Such parent has been assigned to a location where the family is not authorized by the employing agency to go; and

(iii) Either of the following conditions exists:

(*a*) Such parent's home of record is Puerto Rico; or

(*b*) The home of such parent or such parent's spouse was Puerto Rico prior to their marriage; and

(3) Children of a parent who is employed as a supervisor, administrator or instructional personnel in a facility for which arrangements are made pursuant to section 6 of the Act, if both of the following conditions exist:

(i) Such parent was hired in a country in which English is the primary language; and

(ii) The family of such parent migrated to Puerto Rico from an area in which English is the language of instruction in schools generally attended by children of such employees.

(20 U.S.C. 241(c); Sen. Rept. No. 311, 89th Cong., 1st Sess., June 9, 1965, 2; H. Rept. No. 703, July 3, 1953, 83d Cong., 1st Sess., 24, 28, 67)

§ 222.53 Proposal for arrangements under section 6.

(a) Any local educational agency, or the Federal department or agency administering the Federal property on which part or all of such section 6 children reside, which believes that the Secretary should exercise the Secretary's authority under section 6 of the Act to make arrangements to provide free public education for children who reside on Federal property or in other appropriate areas, and which is willing to enter into or assist in entering into such arrangements, should file a proposal with the Secretary, on or before April 30 preceding the fiscal year for which such arrangements would be made.

(b) Such proposal shall be in the form prescribed by the Secretary and bear the endorsement of either the State and local educational agencies or of the appropriate officials of the Federal department or agency administering the property or properties on which the children reside, as appropriate. Such proposal shall include the following:

(1) The reasons why the Secretary should make a determination to enter into such arrangements;

(2) The estimated number of children to be educated;

(3) Financial and educational details necessary for the Secretary to make the determinations and arrangements required under section 6 of the Act; and

(4) The name of the local educational agency or Federal department or agency which would provide such free public education.

(20 U.S.C. 241(d))

§ 222.54 Determinations by the Secretary pursuant to section 6.

If under section 6 of the Act the Secretary determines that the Secretary is required to make such arrangements to provide free public education for part or all of the children on whose behalf the request is made or if, acting upon information otherwise received, he makes a determination to provide free public education for children who reside on Federal property or adjacent areas, such arrangements shall be made with a local educational agency or with the Federal department or agency administering the Federal property on which part or all of the children reside who will be provided education pursuant to the arrangements.

(20 U.S.C. 241, 243(a))

§ 222.55 Notice of Secretary's action.

The Secretary, after his review of the proposal, will notify the responsible Federal official or the local educational agency of his action respecting the arrangements to be made and the amount of Federal funds approved for the year's operating budget. Upon receipt of such notice the agency may take appropriate action to carry out the arrangements but should not incur any binding financial obligation prior to notification that the necessary funds have been appropriated and are available. In those cases where the education is to be provided by a local educational agency, the Secretary will enter into an agreement with the agency which will specify the terms and conditions on which the education is to be provided and the basis on which the Federal payment will be made. The Secretary will prepare the agreement and send it to the local educational agency for signature.

(20 U.S.C. 241(d))

§ 222.56 Arrangements under section 402(a).

(a) The Secretary will, pursuant to proper agreement with the applicant local educational agency and a Federal department or agency, arrange with such Federal department or agency for the utilization of services and facilities and the transfer of funds for the cost thereof in the following circumstances:

(1) The local educational agency is an applicant under section 3 of the Act, and is legally or otherwise unable to provide to children residing on Federal property the particular educational services and facilities regularly furnished its other children; or

(2) The Federal agency or department cannot legally accept compensation to provide such services and facilities.

(b) The total amount of funds transferred to cover the cost of such services and facilities will be deducted from the section 3 entitlement of the local educational agency.

(20 U.S.C. 243(a))

§ 222.57 Expenditures.

In making such arrangements, the Secretary shall not make payments for (a) expenditures made prior to the Secretary's determination that he is required to make such arrangements; or (b) expenditures made subsequent thereto unless such expenditures are within the definition of "current expenditures" in section 403(5) of the Act or are within the general terms of the arrangements; or (c) expenditures in excess of the actual or reasonable per pupil expenditure of providing free public education in the applicable State.

(20 U.S.C. 241)

§ 222.58 Reports.

The local educational agency or the Federal department or agency with which such arrangements are made shall make such reports to the Secretary from time to time as the Secretary may require to perform his functions under the Act.

(20 U.S.C. 241(d), 243(b))

§ 222.59 Termination of arrangements.

Arrangements under section 6 of the Act shall be limited to provide free public education for not more than one school year. If the Secretary determines that the local educational agency or the Federal department or agency with which arrangements have been made has substantially deviated from the terms of the arrangements, the Secretary will so notify the local educational agency or the Federal department or agency concerned. If the local educational agency or the Federal department or agency does not within a reasonable time comply with the terms of the arrangements, the Secretary may terminate such arrangements without further notice.

(20 U.S.C. 241)

Subpart G—Determinations Under Section 5(d) (1) and (2)

SOURCE: 42 FR 15546, Mar. 22, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980

§ 222.60 Scope and purpose.

(a) *Scope.* This subpart applies to determinations made by the Secretary pursuant to section 5(d) of the Act as amended by Pub. L. 93-380, Pub. L. 94-487.

(b) *Purpose.* The sole purpose of the regulations in this subpart is to implement the provisions of section 5(d)(2) of the Act. The definitions and standards contained herein have been developed with respect to the particular intent of the amendment made to section 5(d) of the Act by sections 304(c) and 305(a)(2) of Pub. L. 93-380 and section 330(a) of Pub. L. 94-482 and should not be construed as establishing definitions and standards for any other purpose.

(20 U.S.C. 240(d); secs. 304(c), 305(a)(2), Pub. L. 93-380, 88 Stat. 484; 120 Cong. Rec. S8505, 8507 (daily ed. May 20, 1974))

§ 222.61 Treatment of State aid programs in general

(a) *Statutory provisions.* (1) Section 5(d)(1) of the Act provides that, except as provided in section 5(d)(2), no payments may be made to any local educational agency within a State which takes into consideration payments under section 5 of the Act in determining the eligibility of any agency for State aid, or the amount of that aid, with respect to free public education during the fiscal year of those payments or the preceding fiscal year, or which makes aid available in such a manner as to result in less State aid to any agency which is eligible for payments under the Act than that agency would receive if it were not so eligible.

(2) Section 5(d)(2) of the Act provides that, if a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under the Act may be taken into consideration by that State in determining (i) the relative financial resources available to local educational agencies in that State and (ii) the relative financial need of those agencies for the provision of free public education for children served by those agencies, subject to the provisions in that section.

(3) Section 5(d)(2)(A)(ii) of the Act provides that, if a State takes payments under the Act into consideration in accordance with section 5(d)(2), the State may do so only to the extent of the proportion that the local revenues of a local educational agency covered under the equalization part of a State aid program are of that agency's total local revenues for education.

(4) Section 5(d)(2)(C) of the Act, as added by Pub. L. 94-482 provides that no payment under the Act may be withheld from and no repayment may be required of any State or local educational agency because of any noncompliance with section 5(d)(2)(A) of the Act or this subpart prior to July 1, 1977 if that State had a program of State aid whose procedures were designed to equalize expenditures for free public education among those agencies in effect on October 12, 1976.

(20 U.S.C. 240(d); H.R. Rep. No. 94-1701, 235 (1976))

(b) *General rules.* (1) Except as provided in paragraph (b)(2) of this section, a State may take into consideration payments under the Act in allocating State aid if that State has a program of State aid which qualifies under § 222.62. However those payments may be taken into consideration for each affected local educational agency only in the proportion described in § 222.66.

(2) No program of State aid may qualify under this subpart if a court of that State has determined by final order, not under appeal, that such program fails to equalize expenditures for free public education among local educational agencies within the State or otherwise violates law.

(3) The Secretary will not interpret any of the provisions of §§ 222.62, 222.63, and 222.65 so as to consider any part of a State aid program which allocates funds for the additional cost of providing free public education for children with special educational needs as disequaliziang expenditures for free public education. For the purposes of this subpart, children with special educational needs are handicapped children, non-English speaking children, economically disadvantaged

children, gifted and talented children and the like

(20 U.S.C. 240(d)(2); 20 U.S.C. 242(b))

(c) *Data for determinations.* Determinations under this subpart requiring the submission of financial or school population data may be made either (i) on the basis of data for the fiscal year preceding the fiscal year of determination if the same program was then in effect; or (ii) on the basis of estimates of data for the fiscal year of determination. Data submitted shall be the most currently available and complete data, whether based on revenues or current expenditures. Estimates submitted by a State educational agency or other appropriate State agency must set forth the assumptions upon which such estimates are founded, must be accompanied by an assurance as to their accuracy, and must be adjusted by actual data for the fiscal year of determination as soon as available for the purpose of verification.

(20 U.S.C. 240(d); 242(d))

(d) *Definitions.* For the purposes of this subpart, the following terms shall have the meanings indicated below:

(1) "State aid" means any contribution, no repayment for which is expected, which is made by a State to or on behalf of local educational agencies within the State for current expenditures in the provision of free public education;

(2) "Equalize expenditures" means to meet the standards set forth in § 222.62;

(3) "Current expenditures" means the total charges incurred for the benefit of the school year in an elementary or secondary school program, exclusive of capital outlay and debt service for capital outlay;

(4) "Revenue" means an addition to assets which does not increase any liability, does not represent the recovery of an expenditure, does not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, and does not represent a contribution of fund capital in food service or pupil activity funds. Futhermore, for the purposes of this subpart, the term "revenue" includes only revenue for current expenditures.

(20 U.S.C. 240(d)(2))

§ 222.62 General qualifying standard for State aid programs.

General standard. For the purposes of section 5(d)(2) of the Act, the Secretary will consider a program of State aid to be designed to equalize expenditures for free public education among local educational agencies in that State if the program—

(a) Is authorized by State law in effect for the fiscal year for which the determination under this subpart is made;

(b) Provides for the appointment of State aid among local educational agencies in the State in order to carry out the objectives of the programs;

(c) Provides that in determining the amount to be apportioned to each local educational agency in the State, the State will take into consideration the relative financial resources available to local educational agencies in that State for the program; and

(d) Meets the standard of either §§ 222.63, 222.64 or 222.65 of this subpart.

[42 FR 18279, Apr. 6, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 222.63 Disparity standard.

(a) *25 percent disparity limitation.* The Secretary will consider a program of State aid to have fulfilled the requirement of § 222.62(a)(4) of this subpart if the disparity in the amount of current expenditures or revenue per pupil for free public education among local educational agencies in the State is no more than 25 percent for the fiscal year for which a determination is made under this subpart. The method for calculating the percentage of that disparity in a State is set out in the appendix to this subpart.

(b) (1) *Weighted average disparity for different grade level groups.* If a State requests it, the Secretary will make separate disparity computations for different groups of local educational agencies in the State which have similar grade levels of instruction.

(2) In those cases, the weighted average disparity, based on the proportionate number of pupils in each group, may not be more than 25 percent for all the groups. The method for calculating the weighted average disparity percentage is set out in the appendix to this subpart.

(c) *Per pupil figure computations.* In calculating the current expenditures or revenue disparities under this section, computations of per pupil figures are made on the following bases:

(1) Except as provided in paragraph (c)(2) of this section, the per pupil amount of current expenditures or revenue for a local educational agency is computed on the basis of the total number of pupils receiving free public education in the schools of the agency. The total number of pupils is determined in accordance with whatever standard measurement of pupil count is used in the State.

(2) If a State aid program uses a "weighted pupil," a "classroom," "instructional unit," or other designated unit of need in determining allocations of State aid in order to take account of special cost differentials, the computation of per pupil revenue or current expenditures may be made on those bases. There are two allowable categories of special cost differentials: (i) Those associated with pupils having special educational needs, such as handicapped children, economically disadvantaged children, non-English speaking children, and gifted and talented children; and (ii) those associated with sparsity or density of population, cost of living, or special socioeconomic characteristics within the area served by an agency.

(d) *Revenues and current expenditures included in determinations.* The following revenues or current expenditures must be included for each local educational agency in the State in determining the percentage of disparity under paragraph (a) of this section:

(1) All revenues or current expenditures from State sources, except those applied or contributed outside any equalized part of the State aid program which are designated for special cost differentials of the type specified in paragraph (c)(2) of this section.

(2) All revenues for current expenditures from local or intermediate sources, except those taken into consideration under any equalized part of the State aid program which are designated for special cost differentials of the type specified in paragraph (c)(2) of this section.

(3) Pub. L. 81-874 funds received by the agency under sections 2, 3 and 4 of the Act, except to the extent that (i) they are not taken into consideration under the State aid program, and (ii) they exceed the proportion of those funds that the State would be allowed to take into consideration under § 222.66 of this subpart; and

(4) Any other Federal funds received by the agency for which the agency is not accountable to the Federal Government for their use such as Federal Forest Reserve funds (16 U.S.C. 500).

(20 U.S.C. 240(d)(2))

§ 222.64 Wealth neutrality test.

(a) *General rule.* (1) The Secretary will consider a State aid program to have met the requirement of § 222.62(d) if no less than 85 percent of the total State, intermediate, and local revenues for current expenditures for all local educational agencies in the State are wealth neutral revenues for the Fiscal Year for which a determination is made under this subpart.

(2) Paragraphs (b) and (c) of this section set forth rules for determining which State, intermediate, and local revenues are "wealth neutral revenues."

(3) With respect to calculations under paragraph (c) of this section, extra yields due to special cost differentials established under State law are considered wealth neutral. There are two allowable categories of special cost differentials:

(i) Those associated with pupils having special educational needs, such as handicapped children, economically disadvantaged children, and gifted and talented children; and

(ii) Those associated with sparsity or density of population, cost of living, or special socioeconomic characteristics within the area served by an agency.

(b) *General definition.* "Wealth neutral revenues" are those revenues received by a local educational agency which are not derived from any wealth advantage that a local education agency may have over any other agency in a State.

(c) *Rules of application.* (1) All State and local revenues considered under a State school finance equalization program are wealth neutral to the extent that each local educational agency receives the same amount of dollars per pupil under that program for the same tax effort and is allowed by the State to spend as much per pupil as any other local educational agency in the State under the program. Revenues in excess of those determined to be equally available to all local educational agencies under the program are not wealth neutral except those for special cost differentials specified in paragraph (a)(3) of this section.

Example No. 1. An equalization program requires all local educational agencies to contribute the yield of a 10 mill property tax to the equalization program. The State contributes to each local educational agency an amount that when combined with the local contribution provides an amount of $1,000 per pupil. If no local educational agency receives more or less than $1,000 per pupil under the program, then that amount per pupil in all local educational agencies is wealth neutral. If some local educational agencies earn more than $1,000 per pupil from the 10 mill tax and are allowed to spend those excess revenues, then those excess revenues are not wealth neutral.

Example No. 2. If, under the program described in Example No. 1, the State restricts budget, expenditures, or tax effort increases so that some local educational agencies receive less than $1,000 under the program, amounts above the least amount received by any local educational agency are not wealth neutral.

Example No. 3. If, under the program described in Example No. 1, the State establishes for some local educational agencies a guarantee level which is less or more than $1,000 because of prior expenditure levels and still requires all local educational agencies to contribute the yield of a 10 mill property tax to the program, only the amounts up to the least amount received by any local educational agency is wealth neutral.

Example No. 4. An equalization program guarantees to each local educational agency the difference between $100 per pupil per mill levied and the actual local yield per mill levied. If no local educational agency receives more or less than $100 per pupil per mill levied, then that amount per pupil in all local educational agencies is wealth neutral. If the yield per pupil per mill levied is greater than $100 for some local educational agencies and those agencies are allowed to spend those excess revenues, then those excess revenues are not wealth neutral.

Example No. 5. If, under the program described in Example No. 4, the State restricts budget, expenditure, or tax effort increases so that some local educational agencies are restricted from levying the same number of mills as other local educational agencies, then amounts above the least amount which could be received by any local educational agency under the program are not wealth neutral.

Example No. 6. If, under the program described in Example No. 4, the State establishes for some local educational agencies a guarantee level which is less or more than $100 per pupil per mill levied because of prior expenditure levels, only the amounts up to the least amount received by any local educational agency is wealth neutral.

(2) All State revenues received by a local educational agency under any other program or State aid are wealth neutral to the extent that each local educational agency receives the same dollar amount per pupil from such programs. Revenues in excess of those determined to be equally available to all local educational agencies under such program are not wealth neutral except those revenues for special cost differentials specified in paragraph (a)(3) of this section.

Example No. 1. A State distributes a payment of $100 per pupil for instructional materials to all local educational agencies. These amounts are wealth neutral.

Example No. 2. A State distributes variable per pupil payments to some or all local educational agencies for such purposes as transportation, special education, compensatory education, vocational education, geographic isolation, or for urban factors. These amounts are wealth neutral (see paragraph (a)(3) of this section).

Example No. 3. A State rebates to local educational agencies a portion of sales or income taxes collected in those local educational agencies. Amounts up to the least amount per pupil received in any local educational agency are wealth neutral.

Example No. 4. A State distributes a payment of $125 per pupil to those districts which receive no State aid under the equalization program because of high wealth. These amounts are not wealth neutral because they are earned on the basis of wealth advantage.

(3) All local educational agency tax revenues not considered under the equalization program are wealth neutral to the extent that each local educational agency receives the same amount of dollars per pupil for the same tax effort and is allowed by the State to spend as much per pupil as any other local educational agency in the State.

Example No. 1. A State allows local educational agencies to levy taxes on property (or other bases) independent of the equalization program. Amounts up to the least amount received per pupil per unit of tax effort are wealth neutral.

Example No. 2. Because of budget, expenditure, or tax effort increase limitations, some local educational agencies are restricted from levying the same number of mills as other local educational agencies. Amounts above the least amount which could be received by any local educational agency are not wealth neutral.

(4) All local educational agency nontax revenues which are not considered under the equalization program are wealth neutral to the extent that each local educational agency receives and is allowed to spend the same amount of dollars per pupil of such revenues.

Example No. 1. A State allows local educational agencies to earn and spend certain non-tax revenues such as interest earnings on deposits. Amounts up to the least amount per pupil received of such revenues by any local educational agency are wealth neutral.

Example No. 2. Because of budget or expenditure increase limitations, some local educational agencies are restricted from spending the same amount of dollars per pupil as other local educational agencies. Amounts up to the least amount per pupil which could be spent by any local educational agency are wealth neutral.

(d) The percent of wealth neutral revenues in a State program will be determined by:

(1) Calculating the total wealth neutral revenues for all local educational agencies in the State;

(2) Dividing the total of wealth neutral revenues by the total of all State, intermediate, and local revenues; and

(3) Multiplying by 100.

(e) In cases where per pupil amounts are necessary for calculations, those amounts will be calculated using whatever standard measurement of pupil count or other unit of need used in the State aid calculations.

(f) Further examples illustrating the use of the criteria for determining wealth neutral revenues are contained in the appendix.

(20 U.S.C. 240(d)(2)); S. Rep. No. 763, 93d Cong., 2d Sess. (1974); H.R. Rep. No. 806, 93d Cong., 2d Sess. (1974); Congressional Research Service, *Public Law 874 and State Equalization Plans* (H.R. Comm. Print (1974))

[42 FR 65524, Dec. 30, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 222.65 Consideration for exceptional circumstances.

(a) *General requirements.* A State program which does not conform to the standards of either § 222.63 or § 222.64 of this subpart may, nevertheless, qualify under this section if the Secretary determines on the basis of information submitted by the State, that:

(1) A decision not to apply the exact disparity standard specified in § 222.63 to the program submitted by the State would be justifiable because of exceptional circumstances within the State related to disparities in current expenditures or revenue per pupil for education;

(2) A decision not to apply the wealth neutrality standard in § 222.64 would be justifiable because of exceptional circumstances related to the coverage of educational expenditures by the State equalization program;

(3) Current expenditures or revenues for education in that State will be more equalized if payments under the Act are taken into consideration under this subpart than if they are not; and

(4) The program meets the requirements of paragraph (c) of this section.

(b) *Determination of "more equalized."* For purposes of paragraph (a)(3) of this section, current expenditures or revenues for education within a State are considered "more equalized" if the distribution around the mean per pupil expenditure for all local educational agencies within the State is less when payments under the Act are taken into consideration than when they are not, as calculated according to accepted statistical methods appropriate to the circumstances.

(c) *Specific program requirements.* A program of State aid considered under this section is not considered a program designed to equalize expenditures among local educational agencies in the State unless the Secretary finds that, in addition to meeting the requirements of the preceding paragraphs—

(1) The amount of the revenue available to local educational agencies in the State is not predominantly a function of the wealth of individual local educational agencies;

(2) The program is designed to ensure the provision of financially adequate educational programs and supportive services for every pupil in the State who is enrolled in public schools;

(3) In the determination of the relative financial need of local educational agencies, that program (i) makes provision for identifying those pupils with special educational needs (such as handicapped children, economically disadvantaged children, children with limited English-speaking ability), (ii) takes into consideration the additional costs of providing free public education for such children or categories of children; and (iii) takes into consideration the costs of providing education which might be associated with such factors as sparsity or density of population, cost of living, and socio-economic characteristics of the local educational agencies; except that nothing in this clause shall be construed to require any particular system of weighting of pupils.

(4) The program involves a substantial percentage of school revenues;

(5) The program is designed to provide systems and procedures for evaluating the degree to which the program is achieving its stated objectives.

(20 U.S.C. 240(d)(2); S. Rep. No. 763, 93d Cong., 2d Sess. 56 (1974); H.R. Rep. No. 805, 93d Cong., 2d Sess. 42-44 (1974); 102 Cong. Rec. S 8604-8607 (daily ed., May 20, 1974); *Id.*, H 7401 (daily ed., July 31, 1974); Congressional Research Service, ***Public Law 874 and State Equalization Plans*** 30-34 (H.R. Comm. on Education and Labor Print (March 1974))

[42 FR 65526, Dec. 30, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 222.66 Proportion of funds that may be taken into consideration.

(a) *Provision of law.* Section 5(d)(2)(A)(ii) of the Act provides that, in allocating State aid a State may consider as local resources funds received under the Act only in proportion to the share that local revenues covered under a State equalization program are of total local revenues. That determinations of proportionality must be made on a case-by-case, school district by school district basis, for each local educational agency affected and not on the basis of a general rule to be applied throughout a State.

(20 U.S.C. 240(d)(2)(A)(ii); S. Rep. No. 1026, 93d Cong., 2d Sess., 163 (1974))

(b) *Computation of proportion.* (1) In computing the share that local revenues covered under a State equalization program are of total local revenues for a local educational agency with respect to a program qualifying under § 222.62, the proportion is obtained by dividing (i) the amount of local revenues covered under the equalization program by (ii) the total local revenues attributable to current expenditures for free public education within such agency.

(2) In cases where there are no local revenues for current expenditures and the State provides all of those revenues on behalf of the local educational agency, the State may consider up to 100 percent of the funds received under the Act by that agency in allocating State aid.

(20 U.S.C. 240(d)(2)(A)(ii); 102 Cong. Rec. H. 7403 (daily ed., July 31, 1974))

(c) *Local revenues.* For the purposes of this section—

(1) "Local revenues covered under a State equalization program" means those revenues for current expenditures produced within the boundaries of a local educational agency contributed to or taken into consideration in a program of State aid subject to a determination under this subpart, but excluding all revenues from State and Federal sources.

(2) "Total local revenues" means all revenues for current expenditures of a local educational agency, including revenues for education programs for children needing special services, vocational education, transportation, and the like during the period in question but excluding all revenues from State and Federal sources.

(3) Revenues received by a local educational agency which are produced within the boundaries of an intermediate school district or other local governmental instrumentality will be counted as local revenues.

(d) *Application of proportion to payments under the Act.* (1) The proportion established under this section (or a lesser proportion) for any local educational agency receiving payments under the Act may be applied by a State to actual receipts of those payments or to the prorated entitlements provided for under section 5 of the Act and § 222.24 of this subpart.

(2) That proportion may not be applied to any portion of a payment under the Act made to a local educational agency on the basis of low-rent public housing pupils or handicapped children after July 1, 1975.

(20 U.S.C. 240(d)(2); 102 Cong. Rec. H 7412 (daily ed., July 31, 1974))

§ 222.67 Assurances in applications.

(a) *By applicants.* Each applicant for financial assistance under the Act must set forth an asssurance in its application either (1) that the State in which it is situated is not taking payments to such applicant under the Act into consideration with regard to a program of State aid, or (2) that, if the State is taking such payments into consideration with regard to its program of State aid, the State is doing so, for that applicant, in conformity with § 222.66 of this subpart.

(b) *By State educational agencies.* Each State educational agency which certifies an application for financial assistance under the Act, as provided for in § 222.10 of this part, must submit to the Secretary an assurance with such application either (1) that the State is not taking payments under the Act into consideration with regard to a program of State aid, or (2) that the State is taking such payments into consideration with regard to a program of State aid in conformity with section 5(d)(2) of the Act and this subpart.

(c) *State guarantee of certain payments.* A further assurance is required of any State which does not take into consideration payments under the Act in allocating State aid to local educational agencies. The State must assure, for each application it certifies in accordance with § 222.10 of this part, that it will reimburse any local educational agency the amount of any of those payments taken into consideration but not in fact received by the agency by the time of final payment under the Act for the year of determination. The State must also include this assurance as part of any submission for determination under § 222.68 of this subpart.

(d) *Failure to provide assurances.* A failure on the part of any local or State educational agency to set forth the assurances required by this section constitutes sufficient cause for an initiation of proceedings by the Secretary, as provided for in § 222.68 of this subpart. However, the Secretary will not, because of a failure to provide these assurances, suspend or terminate payments under the Act with respect to such agencies prior to the rendering of a final decision under this subpart.

(20 U.S.C. 240(d); S. Rep. No. 1026, 93d Cong., 2d Sess. 163 (1974))

§ 222.68 Submissions and consultations.

(a) *Initiation.* (1) A proceeding under this subpart leading to a determination by the Secretary as to whether, or the extent to which a State may take into consideration payments under the Act in determining relative finanacial resources or need under a program of State aid may be initiated (i) by the State educational agency or other appropriate agency of the State; (ii) by a local educational agency which is or would be adversely affected by that State action; or (iii) by the Secretary, if the Secretary has reason to believe that the State's action is in violation of section 5(d) of the Act and that payments to local educational agencies in the State should therefore be terminated under section 5(d) of the Act.

(2) Whenever a proceeding under this subpart is initiated, the party initiating the proceeding shall give adequate notice to all State and local agencies which might be adversely affected by a determination. Those agencies will be accorded a right of intervention in the determination proceedings.

(3) Nothing in this subpart shall be construed to prohibit a State which has not obtained a prior determination from the Secretary under this subpart from taking into consideration payments under the Act as provided for in section 5(d)(2) of the Act if that action is in conformity with §§ 222.62 and 222.66 of this subpart.

(20 U.S.C. 240(d)(2); H.R. Rep. No. 805, 93d Cong., 2d Sess., 42-43 (1974))

(b) *Submission.* (1) A submission by a State or local educational agency under this section must be made in the manner requested by the Secretary and must contain such information and assurances as may be required by the Secretary in order to reach a determination under section 5(d) of the Act and this subpart.

(2) A State educational agency in a submission must (i) demonstrate how its program of State aid comports with the criteria and standards in § 222.62 and (ii) indicate for each local educational agency receiving funds under the Act the proportion of those funds which will be taken into consideration in accordance with § 222.66.

(3) A local educational agency in a submission must demonstrate how it is affected by (i) the action of the State and (ii) the applicability of the standards set forth in this subpart to such action.

(4) Whenever a proceeding is initiated under this subpart, the Secretary may request from a State the data deemed necessary to make a determination. A failure on the part of a State to comply with that request within a reasonable period of time shall result in a summary determination by the Secretary that the program of State aid of that State does not comport with the regulations under this subpart.

(c) *Advance consultation.* States may upon request consult with the Department regarding the possible application of the requirements of this subpart to relevant proposed legislation (such as legislation providing for taking into account funds under the Act in determining the amount of State aid) prior to the adoption of the legislation.

(20 U.S.C. 240(d))

§ 222.69 Notice and opportunity for hearing.

(a) *General requirements.* The Secretary will afford reasonable notice of a determination under this subpart and opportunity for a hearing to any State educational agency or local educational agency adversely affected by the determination. The Secretary will afford the notice and opportunity for a hearing and the hearing (if requested) shall take place prior to the implementation by the Secretary of any determination. The notice shall set forth the reasons for the determination in sufficient detail to enable the agencies to respond.

(b) *Requests for hearing.* (1) A State or local educational agency which is adversely affected by a determination under section 5(d) of the Act and this subpart and which desires a hearing regarding that determination must submit a written request for a hearing within 30 days after the Secretary gives appropriate notice. The time within which a request must be filed will not be extended unless the time for filing the request is extended in writing by the Secretary or the Secretary's designee at the time notice of the determination is given.

(2) A request for a hearing in accordance with this section must specify the issues of fact and law to be considered.

(3) If a local educational agency requests a hearing it must furnish a copy of the request to the appropriate State educational agency. If a State requests a hearing, it must furnish a copy of the request to all local educational agencies whose payments under the Act are or would be taken into consideration in the allocation of State aid.

(c) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Secretary or the Secretary's designee (with due regard to the mutual convenience of the parties).

(d) *Counsel.* In all proceedings under this section, all parties shall have the right to be represented by counsel.

(e) *Proceedings.* The Secretary may refer the matter in controversy to a hearing officer or to a hearing panel designated by the Secretary for such purpose. The hearing officer or hearing panel may consist of or include persons who are employees of the Department, employees of other Federal departments and agencies, and persons who are not Federal employees.

(f) *Procedural rules.* (1) If in the opinion of the hearing officer or panel no dispute exists as to a material fact the resolution of which would be materially assisted by oral testimony, the hearing officer or panel shall afford each party to the proceeding an opportunity for presenting its case at the option of the hearing officer or panel (i) in whole or in part in writing or (ii) in an informal conference which shall afford each party sufficient notice of the issues to be considered (where such notice has not previously been afforded).

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the hearing officer or panel shall afford each party, in addition to the notice of issues required by paragraph (f)(1)(ii) of this section, the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(g) *Decisions.* When a hearing officer or panel is designated to consider the matter, the officer or panel shall make an initial decision based upon written findings, which shall be forwarded to the Secretary. The Secretary may, by appropriate notification to the parties, determine to review it or certify it as the final decision of the Secretary without further proceedings. Written notice of the initial decision shall be sent to all parties. In any case in which the Secretary modifies or reverses the initial decision, a notice of that action shall be accompanied by a written statement of the grounds for the reversal or modification. Notice of the final decision of the Secretary shall be served upon all parties to the hearing, the hearing panel and any local educational agency which may be adversely affected thereby.

(h) *Effect on payments.* (1) When an appropriate request for a hearing under this section has been made the Secretary will not suspend or terminate payments to a local educational agency under the Act on the basis of section 5(d)(1) of the Act until a final decision with respect to the matter in controversy has been made under this subpart.

(2) If a State has been finally determined, after notice and opportunity for hearing, to have been taking into consideration payments under the Act in violation of sections 5(d) (1) and (2) of the Act, the Secretary shall terminate payments under the Act to all local educational agencies in that State unless the State provides satisfactory assurances within thirty (30) days after receiving notice of a final decision, that it will restore to all affected local agencies any State aid which was denied the agencies because of those payments.

(3) If a State has been finally determined, after notice and opportunity for a hearing, to have been taking into consideration payments under the Act in excess of the proportion computed under § 222.66 of this subpart, the Secretary shall terminate payments under the Act to all local educational agencies in that State, unless the State provides satisfactory assurances, within thirty (30) days after receiving notice of a final decision, that it will reimburse all affected local educational agencies for the excess amount of payments taken into consideration in the allocation of State aid and that thereafter it will only take into consideration payments under the Act in the proportion permitted.

(4) During the thirty days provided under paragraphs (h) (2) and (3) of this section, for a State to provide sat-

isfactory assurances, the Secretary will suspend payments under the Act to all local educational agencies in the State. However, if during that time the State does provide the assurances required, the Secretary will lift the suspension of payments.

(20 U.S.C. 240(d), 242(b); S. Rep. No. 1026, 93d Cong., 2d Sess. 163 (1974))

Subpart H—Handicapped Children and Children With Specific Learning Disabilities

SOURCE: 43 FR 19762, May 8, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

§ 222.70 General.

(a) *Scope.* The regulation in this Subpart governs the provision of financial assistance to local educational agencies which provide free public education to handicapped children who are claimed under section 3(d)(2)(C) of the Act. The regulation, however, is not alone in governing the relationship between the local educational agency and the handicapped child. Other statutes and regulations which may be pertinent in a particular instance are section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 706 and 34 CFR Part 104 ff.), the Education of the Handicapped Act, as amended by the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq. and 34 CFR Part 300 ff.), and section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-1 and 34 CFR Part 200).

(b) *Purpose.* The purpose of the regulation in this Subpart is to set forth the requirements, interpretations, and guidance necessary to implement section 3(d)(2)(C) of the Act.

(c) *Definitions.* For the purposes of this Subpart, the following terms are defined as indicated:

(1) "Children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. These disorders include conditions such as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

(2) "Education of the Handicapped Act" means Pub. L. 91-230, as amended (20 U.S.C. 1401 et seq.).

(3) "Free public education" means free appropriate public education as used in the Education of the Handicapped Act and as defined in 34 CFR 300.4. In particular, this means special education and related services which:

(i) Are provided at public expense, under public supervision and direction, and without charge,

(ii) Meet the standards of the State educational agency, including the requirements of this part,

(iii) Include preschool, elementary school, or secondary school education in the State involved, and

(iv) Are provided in conformity with an individualized education program which meets the requirements under 34 CFR 300.340-300.369.

(4) "Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired, deaf-blind, multi-handicapped children, or as having specific learning disabilities, who because of those impairments need special education and related services.

(5) "Preschool program" means an educational or related program encompassing the educational level from a child's birth to the time at which elementary education is provided as determined under State law, provided that this program is recognized as free public education under State law.

(6) "Related needs" means those needs related to a handicap or specific learning disability for which related services, in addition to direct instructional services, are deemed necessary so that the child may effectively participate in the instructional program of the local educational agency.

(7) "Related services" means transportation and other developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that these medical services shall be for diagnostic and evaluation purposes only) required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(20 U.S.C. 238(d)(2)(C))

[43 FR 19762, May 8, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

§ 222.71 Eligibility requirements.

(a) In order that a handicapped child may be counted for the purpose of an increased entitlement under section 3(d)(2)(C) of the Pub. L. 81-874, the Act requires that a child must—

(1) Have a parent on active duty in the uniformed services, as defined by section 101 of Title 37 United States Code, or

(2) Reside on Indian lands, as described in section 403(1)(A) of the Act;

(3) Be receiving services suited to the child's special educational and related needs; and

(4) Be enrolled in a program (including a preschool program if appropriate) which is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the child's special educational and related needs provided as part of free public education in the local educational agency.

(b) The applicant agency must meet the regular eligibility requirements of Pub. L. 81-874 under section 3(c) to receive the increase in entitlement under section 3(d)(2)(C). However, there is no minimum number of handicapped children who must be served for the agency to receive the increase in entitlement.

(c) The program provided the handicapped children claimed under section 3(d)(2)(C) of the Act must conform to State standards for programs for handicapped children and must encompass the specific educational and related needs of the children claimed.

(20 U.S.C. 238(a)(b)(d)(2)(C); 240(f); Sen. Rept. No. 93-1026, p. 159 (1974); *Chinle Common School District* v. *Mathews*, Civil No. 76-1273 (D. D.C., 1976))

§ 222.72 Application procedures.

(a) The applicant agency must state the number of handicapped children it claims under section 3(d)(2)(C) of the Act in the application filed in accordance with procedures set forth in Subpart B of this regulation published separately.

(b) The applicant agency must provide the assurances and certifications required under § 222.73 of this subpart as part of the application mentioned in paragraph (a) of this section.

(c) The Secretary may require information in addition to that contained in the application in order to substantiate compliance with assurances provided with the application.

(20 U.S.C. 238(d)(2)(C), 242)

§ 222.73 Assurances and certifications.

(a) *Size, scope, and quality of the programs.* (1) For each applicant for assistance under the Act which is based in any part upon children who are counted under section 3(d)(2)(C) of the Act, the applicant agency must provide an assurance that these children are receiving services in programs (including preschool programs) which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational and related needs of these children. The Secretary will consider any special education program serving the special educational needs of these children which conforms to the requirements for special education programs under Part B of the Education of the Handicapped Act as satisfying the assurance.

(2) For each application containing the assurance required by paragraph (a)(1) of this section, the applicant agency must also provide a certification from its State educational agency that the particular program(s) provided by the applicant conform(s) to State standards for programs for these types of children.

(b) *Education of the Handicapped Act requirements.* (1) For each applicant for assistance under the Act which is based in any part upon a determination under section 3(d)(2)(C) of the Act, the applicant agency must provide an assurance that the programs designed to meet the special educational and related needs of children determined under that section conform to the policies and procedures required in fulfillment of requirement under sections 612 and 613 of the Education of the Handicapped Act.

(2) For each application containing the assurance required by paragraph (b)(1) of this section, the applicant agency must provide a certification from the State educational agency that the program provided by the applicant conforms to the requirements of sections 612 and 613 of the Education of the Handicapped Act.

(3) In undertaking any further determination whether these State standards and programs conform to the policies and procedures required under sections 612 and 613 of the Education of the Handicapped Act, the Secretary shall consult with persons in charge of special education programs for handicapped children and children with specific learning disabilities in the State education agency.

(20 U.S.C. 238(3)(2)(C); H.R. Rept. No. 93-805, pp. 43-46 (1974); Sen. Rept. No. 93-1026, p. 45 (1974); Cong. Record, daily ed., H7396, July 31, 1974)

§ 222.74 Use of section 3(d)(2)(C) funds.

(a) *General.* Section 5(f) of the Act requires that the amount of a payment to an applicant which is attributable to a determination under section 3(d)(2)(C) of the Act must be used for special programs and projects designed to meet the special educational needs of the children counted under that provision. Only payments related to the increase in entitlement affected by section 3(d)(2)(C) must be used in this manner. Payments related to the basic entitlement provided under section 3(c) for those children do not have to be used in this manner.

(20 U.S.C. 240(f))

(b) *Duration of availability of funds.* An applicant may obigate and expend funds received for section 3(d)(2)(C) until the end of the fiscal year succeeding the fiscal year for which they were appropriated. The recipient agency must return those funds to the Department that it has not obligated by the end of that period.

(20 U.S.C. 1225(b))

(c) *Methods of obligation and expenditure of funds.* Obligations and expenditures may be incurred for the uses authorized under section 5(f) of the Act and paragraph (a) of this section in either of two ways:

(1) The applicant agency may reimburse itself for obligations or expenditures from local funds already made during the fiscal year for which the funds were appropriated or during the following fiscal year. Those obligations or expenditures must have been for appropriate programs or projects serving the children from whom the funds under section 3(d)(2)(C) were paid; or

(2) The applicant agency may obligate or spend these funds on a current basis during the fiscal year for which the funds were appropriated or during the following fiscal year. The obligations or expenditures must be for programs or projects serving the children for whom the funds under section 3(d)(2)(C) were paid.

(20 U.S.C. 238(d)(2)(C), 240(f), 242)

(d) *Allowable expenditures.* An agency receiving funds under section 3(d)(2)(C) of the Act shall use those funds for the following types of expenditures:

(1) Expenditures which are reasonably related to the conduct of programs or projects for the education of handicapped children which meet the requirements of this section. These expenditures may include planning, evaluating and disseminating of the results of those programs or projects but may not include the construction of school facilities;

(2) Expenditures for equipment to meet the special educational needs of the handicapped children counted under section 3(d)(2)(C). If funds received under section 3(d)(2)(C) of the Act are used for the acquisition of equipment and any financial advan-

tage is realized through bargains, rebates, discounts, bonuses, free pieces of equipment (not used in the program or project covered by this paragraph) or other circumstances, the fair market value of that financial advantage is not an allowable expenditure and shall not be credited as an expenditure of those funds.

In no case may funds provided by section 3(d)(2)(C) be used to acquire equipment when the title to that equipment would be in a private school and not in the applicant agency.

(e) *No supplanting of State funds.* The use of funds provided under section 3(d)(2)(C) of the Act shall not supplant any State funds which were or would have been available to the applicant agency for the free public education of children counted under section 3(d)(2)(C).

(1) The applicant agency must spend at least the same amount, per pupil, of State general aid funds and State handicapped education funds on children counted under section 3(d)(2)(C) as it does for other similarly handicapped children enrolled in the schools of the agency.

(2) A reduction in the amount, per pupil, of State aid spent on children counted under section 3(d)(2)(C) of the Act from that spent in a previous year raises a presumption that supplanting has occurred. This presumption may be rebutted by the applicant agency demonstrating that an equivalent reduction was made in the amount, per pupil, spent on other handicapped children enrolled in the schools of the agency.

(20 U.S.C. 235, 238, 240 and 242(b))

§ 222.75 Per pupil expenditure requirement.

(a) *Expenditures for children eligible under section 3(d)(2)(C).* Expenditures per pupil by an applicant agency from State, local, and section 3(d)(2)(C) funds for handicapped children enrolled in programs serving children counted under section 3(d)(2)(C) must be greater than the expenditure per pupil for all children, other than handicapped children, receiving free public education in the schools of that agency.

(b) *Computation.* In determining whether an agency fulfills the requirement stated in paragraph (a) of this section, the following computations must be made:

(1) Divide the total current expenditures from State, local, and section 3(d)(2)(C) funds for special educational programs by the total number of children who are being served in the special educational programs of the agency.

(2) Divide the total current expenditures from State and local funds for children receiving a free public education from the agency who are not handicapped children by the total number of those children who are not handicapped.

(3) If the figure obtained under paragraph (b)(1) of this section, exceeds the figure obtained in paragraph (b)(2) of this section, the applicant agency has fulfilled the requirement of paragraph (a) of this section.

(c) *Records and information required of an applicant agency.* An applicant agency which receives funds under section 3(d)(2)(C) must keep records of the expenditures for children receiving a free public education in its schools in such a manner to permit the computation set forth in paragraph (b) of this section. Furthermore, when requested, that agency must furnish to the Secretary whatever information or data the Secretary considers necessary to substantial compliance with the requirements of this section.

(20 U.S.C. 238(d)(2)(C), 240(f); H. Rept. No. 93-763, p. 45 (1974))

§ 222.76 Relation to section 5(d)(2) of the Act.

(a) Section 5(d)(2) of the Act provides that States having a State aid program designed to divide expenditures for children equally among local educational agencies in the State, which conform to Subpart B, may consider payments received by an agency under Pub. L. 81-874 as local resources in determining the need for or the amount of State aid allocated to that agency. A regulation setting forth these standards appears in Subpart B of this part.

(b) Whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act, payments provided under section 3(d)(2)(C) may not be considered by a State in determining the need for or the amount of State aid which will be allocated to a local educational agency receiving those payments.

(20 U.S.C. 238(d)(2)(C), 240(d), (f), 242(b))

§ 222.77 Children in private schools.

(a) An applicant may place a handicapped child in, or refer a handicapped child to a private school or facility, so long as it follows the policies and procedures for doing so established under section 613 of the Education of the Handicapped Act. Regulations implementing those policies and procedures are set forth in 34 CFR Part 300. The applicant must have placed the handicapped child in, or have referred the children to, the private school or facility that he or she is attending in order for the child to be counted under section 3(d)(2)(C) of Pub. L. 81-874.

(b) If placement in a public or private residential program is necessary to provide a free public education to a handicapped child because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the child or his or her parents or guardian.

(c) Children who have been placed in private schools by the parents may participate in public school programs which use section 3(d)(2)(C) funds.

(20 U.S.C. 238, 240(f), 242(b), H. Rept. 93-763, p. 45 (1974))

§ 222.78 Individualized educational programs and parental involvement.

(a) Each applicant must have in effect a written individualized educational program for a child counted under 3(d)(2)(C) of the Act. This program must:

(1) Be in effect before special education and related services are provided to the child; and

(2) Be implemented as soon as possible after meetings held for the purpose of developing, reviewing or revising the child's program.

(b) Each applicant must provide for the participation of and consultation with parents or guardians of handicapped children counted under section 3(d)(2)(C) of the Act in the children's educational development.

(c) Each applicant must take steps to insure the involvement of a handicapped child's parents or guardian in meetings held for the purpose of developing, reviewing or revising that child's educational program.

(d) Each applicant shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(e) The notice under paragraph (d)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(f) If neither parent can attend, the applicant shall use other methods to insure parent participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent in attendance if the applicant is unable to convince the parents that they should attend.

(h) The applicant shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(i) The applicant shall give the parent, on request, a copy of the child's educational program.

(j) An applicant which satisfies, for children counted under section 3(d)(2)(C), the requirements of Part B of the Education of the Handicapped Act regarding the involvement of parents of handicapped children will have satisfied the requirements of this section.

(20 U.S.C. 238(d)(2)(C), 240(f), 242(b), 1231(d))

§ 222.79 Applicability of other statutory and regulatory requirements.

(a) *Applicability of General Provisions Regulations.* Relevant provisions contained in Parts 75 and 77 of this chapter are applicable to programs conducted under section 3(d)(2)(C), with the following exceptions:

Sec.

100a.15 Applications for grants or contracts.

100a.26 Review of applications.

100a.27 Disposition of applications.

100a.31 Preapplications.

SUBPART C—APPLICATION FORMS FOR STATE AND LOCAL GOVERNMENTS

100a.54 Duration of projects.

100a.62 Payment methods for nonconstruction projects.

100a.71 Checks-paid basis letter of credit.

SUBPART P—FINANCIAL REPORTING REQUIREMENTS

100a.405 Request for advance or reimbursement.

SUBPART Q—MONITORING AND REPORTING OF PROGRAM PERFORMANCE

100a.432 Performance reports for nonconstruction projects.

(20 U.S.C. 1221c(b)(1); 20 U.S.C. 242(b); OMB Cir. A-102)

(b) *Applicability of civil rights and related requirements.* Payments provided under section 3(d)(2)(C) are subject to the requirements of the following laws and regulations: Title VI of the Civil Rights Act of 1964 (34 CFR Part 100); Title IX of the Educational Amendments of 1972 (34 CFR Part 106); and section 504 of the Vocational Rehabilitation Act of 1973 (34 CFR Part 104).

(42 U.S.C. 200d; 20 U.S.C. 1681, 29 U.S.C. 794)

Subpart I—Entitlements Related To Low-Rent Public Housing

SOURCE: 43 FR 19765, May 8, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

§ 222.80 General.

(a) *Scope.* The regulation in this subpart concerns entitlements calculated under section 3 of the Act with respect to children who reside on low-rent public housing or who reside with a parent who is employed on low-rent public housing.

(b) *Purpose.* The purpose of the regulation in this Subpart is to implement the requirement stated in section 5(e)(3) of the Act that funds paid to local educational agencies with respect to the children described in paragraph (a) of this section must be used for special programs and projects designed to meet the special educational needs of educationally deprived children. This regulation establishes particular procedural and substantive requirements regarding the application for and use of these funds.

(c) *Definitions.* For the purposes of this subpart, the following terms are defined as indicated:

(1) "Educationally deprived children" means (1) children who have need for special educational assistance in order that their level of achievement can be raised to that appropriate for children of their age; and (2) children who are handicapped, as defined in 34 CFR 222.70(c).

(20 U.S.C. 240(e), 242(b), 1401(1))

(2) "Low-rent public housing" means any low-rent public housing, whether or not owned by the United States, which is part of a low-rent housing project assisted under the United States Housing Act of 1937, section 516 of the Housing Act of 1949, or part B of title III of the Economic Opportunity Act of 1964.

(20 U.S.C. 240(e), 244(1)(c))

(3) "Section 5(e)" means section 5(e) of Pub. L. 81-874.

(20 U.S.C. 240(e))

(4) "Title I" means title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241a et seq).

(20 U.S.C. 240(e))

§ 222.81 Use of section 5(e) funds.

(a) *General.* Section 5(e)(3) of the Act requires that an applicant which receives a payment based on a determination under section 5(e)(1) of the Act (payments attributable to children residing on, or residing with a parent employed on, low-rent public housing) use the funds from that payment only for special programs and projects designed to meet the special educational needs of educationally deprived children.

(b) *Use priorities.* An applicant receiving funds under section 5(e) must use those funds in the order stated below.

An applicant agency first has a choice of using the section 5(e) funds for either priority (1) or priority (2), or both, if applicable. However, it must fulfill the requirements of priority (2), if applicable, before proceeding to priority (3). It must then fulfill the requirements of priority (3) before proceeding to priority (4). The priorities are:

(1) *Agencies with reduced title I allocations.* If the local educational agency has:

(i) Received reduced allocations of title I funds because of the revision of the title I distribution formula in section 103 of Pub. L. 93-380 (Education Amendments of 1974); or

(ii) Received funds under subpart C of title I (as in effect before repeal by Pub. L. 93-380) during the period of July 1, 1973 to June 30, 1975, then it may use section 5(e) funds to continue or supplement existing title I programs in title I eligible school attendance areas already receiving title I assistance.

(2) *Unserved title I eligible areas.* If the local educational agency has school attendance areas which are eligible for title I assistance but which are not served by a title I program, the local educational agency may use the section 5(e) funds to provide programs for educationally deprived children in those areas.

(3) *Other title I programs.* If all eligible title I school attendance areas which did not receive title I funds are served by a section 5(e) program, the local educational agency may use any balance of these funds to supplement existing title I programs in other title I eligible areas.

(4) *Other school attendance areas.* If title I or section 5(e) programs are provided for all title I eligible school attendance areas, the local educational agency may use these funds to carry out the same type of programs for educationally deprived children in other school attendance areas.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974))

(c) *Section 5(e) funds supplementary to State and local funds.* An applicant agency must use section 5(e) funds in a manner which supplement and do not supplant State and local funds which are or would have been expended for the free public education of the children to be served by the use of the section 5(e) funds. As part of this requirement, applicant agencies must adhere to the following practices:

(1) The use of section 5(e) funds must not result in a decrease in the use of State or local funds for the educationally deprived children to be served which, in the absence of funds provided under section 5(e), would be made available for the education of those children. This includes State and local funds for general education purposes as well as for special education purposes.

(2) The use of section 5(e) funds must not result in a penalization, with respect to the use of State or local funds for their education, of the educationally deprived children to be served, as compared to other children whose education is provided by the applicant agency.

(3) The applicant agency may use section 5(e) funds to provide services not provided by funds from other sources. However, there may be State or local funds available to the applicant agency which are designated for the same services included in the section 5(e) program or project. If there are any of those funds available to that agency at the time it submits its section 5(e) proposal, then it must apply those funds in conjunction with the section 5(e) program or project.

(4) The applicant agency may not use the section 5(e) funds to provide services which the applicant agency is required to provide under State law or under a formal determination under

title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, or section 504 of the Vocational Rehabilitation Act of 1973, as amended, or under a final court order.

(20 U.S.C. 240(d), (e), 242(b); S. Rept. 93-106, p. 162 (1974))

(d) *Relation to section 5(d)(2) of the Act.* (1) Section 5(d)(2) of the Act provides that States having State aid programs designed to divide expenditures for children equally among local educational agencies in the State, which conform to Subpart B, may consider payments received by an agency under Pub. L. 81-874 as local resources in determining the need for or the amount of State aid allocated to that agency. The regulation setting forth those standards appears in Subpart G of this part.

(2) Whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act, payments provided under section 5(e) may not be considered by a State in determining the need or amount of State aid which will be allocated to a local educational agency receiving those payments.

(20 U.S.C. 240(d)(2), (e), 242(b); S. Rept. 93-1026, pp. 162-163 (1974); S. Rept. No. 93-763, pp. 55-56 (1974); H. Rept. No. 93-805, pp. 42-43 (1974))

(e) *Use of section 5(e) funds with other funds.* An applicant may not consolidate section 5(e) funds with funds from other sources, including other Federal funds. An applicant must keep records necessary to identify, for accounting and audit purposes, expenditures from section 5(e) funds for programs and projects specified in paragraph (b) of this section. However, section 5(e) funds may be used concurrently with funds from other sources in those programs and projects.

(20 U.S.C. 240(e), 20 U.S.C. 1231(c)(1)(C))

(f) *Allowable expenditures.* An applicant agency which receives funds under section 5(e) must use those funds for expenditures which are directly related to the conduct of section 5(e) programs or projects, including expenditures for appropriate staff or instructional materials and supplies. These expenditures may also include:

(1) Expenditures for the construction of school facilities to meet the special educational needs of the educationally deprived children served with section 5(e) funds, but only if:

(i) The construction is essential to assure the success of the program or project serving those children, and

(ii) The construction project complies with the requirements of 45 CFR Part 100a, Subpart K (Construction Requirements);

(2) Expenditures for equipment, exclusive of instructional materials and supplies, to meet the specific educational needs of the educationally deprived children in the program or project but only if:

(i) The equipment is essential to meet the needs of those children; and

(ii) The recipient agency has a staff trained in the use of the equipment to be acquired or has made provision for adequate staff training in the use of that equipment.

If section 5(e) funds are used for the acquisition of equipment and any financial advantage is realized through bargains, rebates, discounts, bonuses, free pieces of equipment (not used in the program or project contemplated by this paragraph) or other circumstances, the fair value of that financial advantage is not an allowable expenditure and shall not be credited as an expenditure of those funds.

(20 U.S.C. 235, 238, 240(e), 242(b))

(g) *Use of property acquired with section 5(e) funds.* The applicant shall maintain title to and administrative control over property acquired with section 5(e) funds. The applicant shall use this property for the purposes provided in this section and shall not permit the property to be used to benefit any private school. The incidental use of the property for other purposes is permitted only for related educational purposes on public premises and only so long as the use does not interfere with the carrying out of a project under section 5(e).

(20 U.S.C. 240(e), 242(b))

§ 222.82 Application procedures.

(a) *Claims for low-rent public housing children.* In accordance with the procedures set forth in Subpart B of this part, an applicant agency must file in its regular application, initial claims for children who reside on or reside with a parent employed on low-rent public housing property. The Secretary, however, will not make any payments based on those claims until the applicant agency has completed the steps set forth in paragraph (b) of this section.

(b) *Supplemental submissions.* The applicant agency must complete the following steps before it may receive any payments based on claims for low-rent public housing children.

(1) The applicant agency must submit to its State educational agency, as a supplement to its application filed under Subpart B of this part, a document describing the proposed use of the section 5(e) funds. The document must establish that the applicant agency has complied with the requirements of §§ 222.81, 222.84, 222.85, 222.86, 222.87, and 222.88 of this subpart. The State educational agency should retain this document, unless the Secretary specifically requests the agency to forward it.

(2) The applicant agency must obtain a certification from the State educational agency, stating:

(i) The particular priority use(s) selected by the applicant agency in accordance with § 222.81 of this subpart, and that the use(s) selected is appropriate;

(ii) That the proposed use(s) conforms to the requirements of this subpart; and

(iii) The amount of section 5(e) funds that the applicant agency will apply to the approved program or project.

This State certification must be based on a review of the document submitted by the applicant agency in accordance with paragraph (b)(1) of this section. The State certification must be submitted to the Secretary, either directly by the applicant agency or on behalf of the applicant agency by the State agency, before section 5(e) funds can be released.

(20 U.S.C. 240(e), 242(b); Sen. Rept. No. 93-1026, p. 162 (1974))

(c) *Assurances.* An applicant agency which submits a claim based on children who live in low-rent public housing must provide the following assurances with its application filed under Subpart B (Applications):

(1) An assurance that the section 5(e) funds will be used only for the purposes for which they were granted and in accordance with the requirements of that section of the Act and this regulation; and

(2) An assurance that the section 5(e) funds will be used in a manner which supplements and does not supplant State and local funds which are or which would be expended for the free public education of the children to be served by the use of the section 5(e) funds.

(20 U.S.C. 240-242(b))

§ 222.83 Monitoring.

(a) The State educational agency should monitor the expenditure of section 5(e) funds by applicants for programs and projects certified by that agency in accordance with § 222.82(b) of this subpart. Whenever a State educational agency audits a title I program or project in a local educational agency which is also conducting a section 5(e) program or project, the State agency should also audit the section 5(e) program or project.

(b) If a State educational agency finds at any time that an applicant is not using any of its section 5(e) funds for the purposes certified by the State or in some other way is not complying with the requirements of this subpart, it should immediately notify the Secretary.

(c) If the Department has already audited an applicant's section 5(e) program or project, it is not expected that the State educational agency would audit the same program or project.

(20 U.S.C. 2401(e); Sen. Rept. No. 93-1026, p. 162 (1974); Cong. Rec. daily ed., July 31, 1974, H7396)

[43 FR 19765, May. 8, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

§ 222.84 Needs assessment.

An applicant agency which submits a claim based on children who live in low-rent public housing must provide, as part of the document required to be submitted to the State educational agency under § 222.82(b) of this subpart, sufficient information to enable the State educational agency to determine that the applicant has made a needs assessment of the children to be served in its school. The steps required for this needs assessment are:

(a) *Review of existing data.* The local educational agency must review existing data on the performance of children in the agency's basic programs of instruction in all attendance areas. The purpose of the review is to determine the incidence and severity of educational deprivation among all children receiving free public education in all attendance areas.

(1) The data reviewed must include past evaluations, if any, of programs or projects that used section 5(e) funds in that agency.

(2) The agency must review data on children enrolled in private schools if the program or project for which section 5(e) funds will be used is designed to serve any of those children.

(3) If the agency has already reviewed data in connection with a needs assessment under title I for the fiscal year for which the section 5(e) funds are to be used, except for a review of past evaluations of projects funded solely with section 5(e) funds, the agency does not have to conduct another review under this paragraph.

(b) *Selection of project areas, target groups, and the needs to be served.* (1) The local educational agency, on the basis of its findings from the review conducted under paragraph (a) of this section, must select:

(i) The project areas (in accordance with § 222.80(c)(2));

(ii) The age or grade levels at which it will operate the section 5(e) project(s); and

(iii) The types of educational needs to be addressed by the project(s).

(c) *Identification of target group children.* The applicant agency, using the data reviewed under paragraph (a), must identify all of the educationally deprived children in the areas to be served who are in the age or grade levels and have the type of educational needs identified under paragraph (b) of this section.

(d) *Identification of children most in need.* The local educational agency must secure any additional objective data which, in combination with the existing data specified in paragraph (a), will enable it to identify which of the educationally deprived children identified in paragraph (c) of this section, are most in need of special assistance.

(e) *Selection criteria.* The local educational agency must set forth specific criteria by which the educationally deprived children in the project areas will be chosen to receive section 5(e) services. An educationally deprived child may be included in a project even though he or she is not from a low-income family.

(f) *Diagnostic procedures.* The local educational agency must use adequate diagnostic procedures to determine the special educational needs of the children chosen to be served in a section 5(e) project.

(g) *Consultation.* In meeting the requirements under this section, the local educational agency must, to the extent feasible, consult with teachers, parents, and persons knowledgeable of the needs of private and public school children.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974); Cong. Rec. daily ed., July 31, 1974, H7396)

§ 222.85 Project description, size, scope, and quality.

(a) *Project description.* As part of the document required to be submitted to the State educational agency under § 222.82(b), the applicant agency must provide a description of the section 5(e) project(s) which includes, for each project:

(1) The educational objectives of the project and the relationship of these objectives to the special educational needs identified by the diagnostic procedures required under § 222.84(f);

(2) The resources (including the type of staff and materials) to be used in the implementation of the projects and plans for their use;

(3) The time periods and instructional settings for the project services;

(4) The number of the children to be served and a general description of their special educational needs;

(5) The methods that will be used to evaluate the success of the project in attaining its objectives;

(6) A budget detailing the expenditures required for the implementation of the projects;

(7) The special educational needs and number of children, if any, who reside outside the project area and who will participate, as well as the manner of their participation; and

(8) Specific provisions for informing and consulting with parents concerning the services to be provided for their children under section 5(e), the performance of their children, and the ways in which those parents can assist their children in realizing the benefits those services are intended to provide.

(b) *Size, scope, and quality.* As part of the document required to be submitted to the State educational agency under § 222.82(b), the applicant agency must provide sufficient information for the State agency to determine that the section 5(e) program(s) or project(s) is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. In particular, the applicant agency must demonstrate that:

(1) The educational objectives of the project relate to one or more of the special educational needs of the participating children, as identified in § 222.84;

(2) The resources to be used in the project and the plans for their use are consistent with, and show reasonable promise of, meeting the objectives of the project;

(3) The evaluation plans comply with § 222.86 and are adequate for measuring the attainment of the objectives described in paragraph (b)(1) of this section;

(4) The expenditures for the project (as set forth in the budget) are not wasteful and are proposed for use solely to meet the special educational needs of educationally deprived children identified in accordance with § 222.84;

(5) The project concentrates on a sufficiently limited number of services for a sufficiently limited number of educationally deprived children, identified in accordance with § 222.84, to show reasonable promise of meeting the educational objectives identified in paragraph (a) of this section;

(6) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of schools or of the student body at large in a school or of a specified grade in a school;

(7) Any services or resources provided under section 5(e) will be offered only to those children who have been selected to participate in the project in accordance with § 222.84, except as approved under paragraph (b)(9) of this section;

(8) If services are provided in the regular classroom or in other settings in which children other than those properly selected to participate in the project will be present, these services will be directed to the selected children and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate;

(9) If educationally deprived children residing outside the project area will participate, these requirements must be considered:

(i) Children are selected under the same criteria as the children from the project area;

(ii) Their participation will not result in the exclusion of children from the project area who meet these criteria;

(iii) The project will have been designed solely for the selected children from the project area; and

(iv) Participation of children from outside the project area will not impair the effectiveness of the project and will not result in any extra cost; and

(10) Services are equitably provided to all children with State aid and local funds without regard to the availability of section 5(e) funds in the applicant's schools for the educationally deprived children.

(c) *Relation to existing Title I programs or projects.* If the applicant agency proposes to use the section 5(e) funds to supplement, under § 222.81 (b)(1) or (b)(3), an existing Title I program or project it is conducting in a particular school attendance area, the agency must indicate this in the document provided the State educational agency under § 222.82. In that case, the applicant agency is not required to describe, in the detail required by paragraph (a) of this section, the basic program or project that will be supplemented. It must describe only how the section 5(e) will supplement that program or project.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974))

§ 222.86 Measurement of educational achievement and evaluation of programs.

As part of the document required to be submitted to the State educational agency under § 222.82(b), the applicant agency must describe the procedures and techniques that it will use to evaluate, at least annually, the effectiveness of section 5(e) projects in meeting the special educational needs of participating children. The description must include appropriate performance criteria and the instruments and methods to be used to objectively measure changes in the educational achievement of those children.

(a) The applicant agency must use objective standards or norms in measuring the effectiveness of section 5(e) projects for improving the educational achievement of the participating educationally deprived children.

(b) The applicant agency must evaluate the effectiveness of programs and projects for children enrolled in private schools who participated in them.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974))

§ 222.87 Parent advisory councils.

(a) *Scope.* Section 141(a)(14) of Title I and § 201.25 of the Title I regulation (34 CFR 201.25) require the establishment of district advisory councils and school advisory councils by local educational agencies receiving assistance under Title I. This section of this subpart sets forth the rules for establishing and operating of district and school advisory councils for projects assisted under section 5(e).

(b) *Section 5(e) projects and existing Title I district council.* If a local educational agency which receives funds under section 5(e) has established a district advisory council under section 141(a)(14) of Title I and § 201.25 of the Title I regulation, that agency may designate that council to serve as the district advisory council for projects supported in whole or in part with funds under section 5(e), if it takes steps to insure that:

(1) The functions and duties of the council are extended to these projects; and

(2) The district advisory council includes at least one member who is selected by parents in a project area (if any) having a project served with funds under section 5(e) but not with funds under Title I. See § 222.81 (b)(1) and (b)(3).

(c) *Section 5(e) projects in agencies without Title I district councils.* If an applicant agency which receives section 5(e) funds does not have an existing Title I district advisory council, it must establish a district advisory council for section 5(e) projects in the same way that Title I district advisory councils are established under § 116a.25 of the Title I regulation.

(d) *Section 5(e) projects and existing Title I school advisory councils.* If an applicant agency which receives section 5(e) funds uses these funds for projects in a school attendance area which has an existing Title I school advisory council, the agency may designate that council to serve as the school advisory council for projects supported in whole or in part with funds under section 5(e), if the functions and duties of the council are extended to those projects. See § 222.81 (b)(1) and (b)(3).

(e) *Section 5(e) projects in school attendance areas without Title I school advisory councils.* If an applicant agency which receives section 5(e) funds proposes to use those funds in a school attendance area which does not have an existing Title I school advisory council, it must establish a school advisory council for that attendance area in the same way that Title I school advisory councils are established under § 201.25 of the Title I regulation.

(f) *General rules for advisory councils.* The following rules apply to advisory councils designated or established by an applicant agency under this section:

(1) Parents of children who are participating (or will participate) in a project for which section 5(e) funds are used are eligible for membership on a district advisory council or school advisory council to the same extent that they would be under § 201.25 of the Title I regulation if their children participated in projects supported with Title I funds.

(2) Parents in school attendance areas served by a project supported with section 5(e) funds are eligible to participate in the selection of members of the district and school advisory councils.

(3) The advisory functions of these councils and their rights to access to information under § 201.25 of the Title I regulation extend to projects supported with section 5(e) funds.

(g) *Supplements to applications.* As part of the document required to be submitted to the State educational agency under § 222.82(b)(2), an applicant agency which receives section 5(e) funds must include a description of the steps which it has taken or is taking to meet the requirements of this section. The description must be sufficient to permit the State educational agency making the certification under § 222.82(b)(2) to determine that the steps described by the applicant agency are adequate to meet the requirements of this section.

(20 U.S.C. 240(e); 242(b); S. Rept. No. 93-1026, p. 162 (1974))

§ 222.88 Participation of private school children.

(a) *Participation permitted.* Applicants receiving section 5(e) funds may provide services with those funds to educationally deprived children attending private schools with those funds.

(b) *Rules for participation.* If an applicant includes children attending private schools in a section 5(e) program or project, the use of section 5(e) funds for those children is subject to the following conditions:

(1) Educationally deprived children attending private schools must be selected for the section 5(e) program or project on the same basis as children attending public schools. The supplement to the application submitted under § 222.82(b) must state:

(i) The number of private school children who were found to be educationally deprived according to specific criteria used under § 222.84;

(ii) The number of those children who are expected to be included in the section 5(e) program or project; and

(iii) The degree and manner of their expected participation.

(2) The programs or projects in which those children are included must meet the children's special educational needs rather than the general needs of the private schools which they attend, the student body of those schools, or children within a specific grade in those schools. Provisions for serving educationally deprived children attending private schools may not include the financing of the existing level of instruction in the private schools.

(3) Any project involving the participation at the same site of children attending private schools and children attending public schools must avoid, as much as possible, classes which are separated by school attendance or religious affiliation of the children.

(4) Public school personnel may be made available in other than public school facilities, but only when necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, and guidance and counseling services) for those educationally deprived children for whom those services were designed, and only when those services are not normally provided by the private schools.

(5) Provisions for special educational services for educationally deprived children attending private schools may not include paying salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control.

(6) An applicant agency which conducts a project including educationally deprived children attending private schools must maintain continuing administrative direction and control over those services and over the use of equipment required to provide those services.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974))

§ 222.89 Applicability of other statutory and regulatory requirements.

(a) *Applicability of general provisions regulations.* Relevant provisions contained in Parts 75 and 77 of this chapter are applicable to programs conducted under section 5(e), with the following exceptions:

Sec.
100a.15 Applications for grants or contracts.
100a.26 Review of applications.
100a.27 Disposition of applications.
100a.31 Preapplications.

SUBPART C—APPLICATION FORMS FOR STATE AND LOCAL GOVERNMENTS

100a.54 Duration of projects.
100a.62 Payment methods for nonconstruction projects.
100a.71 Checks-paid basis letter of credit.

SUBPART P—FINANCIAL REPORTING REQUIREMENTS

100a.405 Request for advance or reimbursement.

SUBPART Q—MONITORING AND REPORTING OF PROGRAM PERFORMANCE

100a.432 Performance reports for nonconstruction projects.

(20 U.S.C. 1221c(b)(1); 20 U.S.C. 242(b); OMB Cir. A102)

(b) *Applicability of civil rights and related requirements.* Payments provided under section 3(d)(2)(C) are subject to the published requirements of the following laws and regulations: Title VI of the Civil Rights Act of 1964 (34 CFR Part 100); Title IX of the Educational Amendments of 1972 (34 CFR Part 106); and section 504 of the Vocational Rehabilitation Act of 1973 (34 CFR Part 104).

(42 U.S.C. 200d; 20 U.S.C. 1681, 29 U.S.C. 794)

APPENDIX

[Pub. L. 81-874, Section 5(d)]

ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES; METHODS OF CALCULATIONS FOR TREATMENT OF PAYMENT UNDER STATE EQUALIZATION PROGRAMS

The following paragraphs described the methods for making certain calculations in conjunction with determinations made under various requirements of the regulations set forth in this subpart. These methods shall be the only methods used in making these calculations.

1. *Determinations of disparity standard compliance under § 222.63(b)(1).*

The determination of disparity in current expenditures or revenue per pupil is made by:

(a) Ranking all local educational agencies having similar grade levels within the State on the basis of current expenditures or revenues per pupil with respect to the fiscal year for which data has been submitted in accordance with these regulations;

(b) Identifying those local agencies in each ranking which fall at the 95th and 5th percentiles of the total number of pupils in attendance in the schools of these agencies; and

(c) Subtracting the lower current expenditure or revenue per pupil figure from the higher for those agencies identified in paragraph (b) and dividing the difference by the lower figure.

Example: In State X, after ranking all local educational agencies organized on a grade 9-12 basis in order of the expenditures per pupil for the fiscal year in question, it is ascertained by counting the number of pupils in attendance in these agencies in ascending order of expenditure that the 5th percentile of student population is reached at LEA A with a per pupil expenditure of $820, and that the 95th percentile of student population is reached at LEA B with a per pupil expenditure of $1000. The percentage disparity between the 95th and 5th local educational agencies is 22 percent ($1000 − $820 = $180 ÷ $820). The program would be deemed to qualify.

(d) In cases under § 222.63(b), where separate computations are made for different groups of local educational agencies, the disparity percentage for each group is obtained in the manner described in paragraphs (a), (b) and (c) above. Then the weighted average disparity percentage as for the State as a whole is determined by:

(i) Multiplying the disparity percentage for each group by the total number of pupils receiving free public education in the schools in that group;

(ii) Summing the figures obtained in (i); and

(iii) Dividing the sum obtained in (ii) by the total number of pupils for all the groups.

Example: For State Y three groups of local educational agencies were considered. Group No. 1 (grades 1-6) had a disparity percentage of 18 percent and 80,000 pupils. Group No. 2 (grades 7-12) had a disparity percentage of 22 percent and 100,000 pupils. Group No. 3 (grades 1-12) had a disparity percentage of 35 percent and 20,000 pupils. The figure obtained under (i) is 14,400 for group No. 1, 22,000 for group No. 2, and 7000 for group No. 3. The sum of these figures under (ii) is 43,400. Dividing that number by the total number of pupils for all three groups (200,000) gives a weighted average percentage of 21.7 percent. State Y meets the requirement of § 222.63(b).

2. *Determination under § 222.63(b) as to maximum proportion of Pub. L. 81-874 payments that may be taken into consideration by a State under an equalization program.* The proportion that local revenues covered under a State equalization program are of total local revenues for a particular local educational agency shall be obtained by dividing: (a) the amount of local revenues covered under the equalization program by (b) the total local revenues attributable to current education within the agency.

Examples.

Example 1. State A has an equalization program under which each LEA is guaranteed $900 per pupil less the LEA contribution based on a uniform tax levy. LEA X contributes $700 per pupil and the State contributes the $200 difference. No other local revenues are applied to current expenditures for education by LEA X. The percentage of funds under the Act which may be taken into consideration by State A for LEA X is 100% (700/700). If LEA X receives $100 per pupil in Pub. L. 81-874 funds, $100 per pupil may be taken into consideration by State A in determining LEA X's relative financial resources and needs under the program. LEA X is regarded as contributing $800 and State A would now contribute the $100 difference.

Example 2. The initial facts are the same as in Example 1, except that LEA X, under a permissible additional levy outside the equalization program, raises an additional $100 per pupil. The percentage of Pub. L. 81-874 funds which may be taken into consideration is 87.5% (700/800). If LEA X receives $100 per pupil in Pub. L. 81-874 funds, $87.50 per pupil may be taken into consideration. LEA X is now regarded as contributing $787.50 per pupil under the program and State A would now contribute $112.50 per pupil as the difference.

Example 3. State B has an equalization program in which each participating LEA is guaranteed a certain per pupil revenue at various levels of tax rates. For an 8 mill rate the guarantee is $500, for 9 mills $550, for 10 mills $600. LEA Y levies a 10 mill rate and realizes $300 per pupil. Furthermore, it levies an additional 10 mills under a local leeway option, realizing another $300 per pupil. The percentage of Pub. L. 81-874 which may be taken into consideration is 50% (300/600). If LEA Y receives $100 per pupil in Pub. L. 81-874 funds, $50 per pupil may be taken into consideration. LEA Y may be regarded as contributing $350 per pupil under the program and State B would not contribute $250 as the difference.

Example 4. The initial facts are the same as in Example 3, except that LEA Z in State B, while taxing at the same 10 mill rate for both the equalization program and leeway allowance as LEA Y, realizes $550 per pupil for each tax. As with LEA Y, the percentage of Pub. L. 81-874 funds which may be taken into consideration for LEA Z is 50% (550/1100). If LEA Z receives $150 per pupil in Pub. L. 81-874 funds, then up to $75 per pupil normally could be taken into consideration. However, since LEA Z would have received only $50 per pupil in State aid, only $50 on the allowable $75 could be taken into consideration. Thus, LEA Z may be regarded as contributing $600 per pupil under the program and State B would not contribute any State aid.

Example 5. The initial facts are the same as in Example 4, except that LEA Z realizes $600 per pupil from each of the 10 mill taxes. Since LEA Z is regarded as contributing $600 to the equalization program and receives no State aid, no Pub. L. 81-874 funds are taken into consideration under the program.

3. *Examples of wealth neutrality calculations under § 222.64.*

Example 1. State A has an equalization program under which each LEA is guaranteed $900 per pupil less the LEA contribution derived from a uniform required tax of 20 mills.

A minimum of $100 per pupil in paid even if the required tax produces more than $900. Each LEA is permitted to levy additional local taxes. Additional categorical State aid is made available for special cost programs. The State has no limitations on budget, expenditure or local tax effort increases. The State is composed of three LEA's with data as shown.

	LEA No. 1	LEA No. 2	LEA No. 3
Taxable wealth per pupil	$30,000	$60,000	$20,000
Enrollment	2,000	1,000	1,000

	LEA No. 1	LEA No. 2	LEA No. 3
Yield per pupil from required local tax	$600	$1,200	$400
Equalized State aid per pupil	300	100	500
Additional local tax per pupil	100	300	70
Additional State aid per pupil	160	150	155
Total State, intermediate, and local revenues per pupil	1,160	1,750	1,125

LEA No. 1

The $600 per pupil derived from the required local tax rate and the $300 per pupil in State equalization aid are neutral since $900 per pupil was the least amount realized by any LEA for the same required tax effort. One third of the $100 per pupil from the additional local tax is not neutral since the least wealthy LEA, #3, could only realize two-third of the revenue that LEA #1 could at the same tax rate. The $160 per pupil of State categorical aid is neutral. Thus, $1,127 per pupil ($600 + $300 + ⅔ of $100 + $160) is wealth neutral and $33 per pupil is not neutral.

LEA No. 2

Of the $1,200 per pupil derived from local required effort $900 is neutral since that was the least amount realized by any LEA for the required local tax rate. The $300 per pupil above the guarantee and the $100 per pupil minimum State equalization aid are not neutral since they exceed the least amount realized by another agency. Two-thirds of the $300 per pupil realized on the additional local tax, $200, is not neutral since the least wealthy, LEA #3, could only realize one-third of the revenue that LEA #2 could at the same rate. The $150 per pupil of State categorical aid is neutral. Thus, $1,150 per pupil ($900 + ⅓ of $300 + $150) is wealth neutral and $600 per pupil is not neutral.

LEA No. 3

The $400 per pupil derived from the required local tax rate and the $500 per pupil in State equalization aid are neutral since $900 is the least amount realized under the equalization program. All of the $70 per pupil realized from the additional local tax is neutral since LEA #3 is the least wealthy in the State. The $155 per pupil of State categorical aid is neutral. Thus, all of the $1,125 per pupil is neutral.

The calculation of the percentage of wealth neutral funds for State A is as follows:

	Total revenues			
	Neutral		Not neutral	
LEA No. 1	$1,127 × 2,000	per pupil pupils	$33 × 2,000	per pupil pupils
	$2,254,000		$66,000	
LEA No. 2	$1,150 × 1,000	per pupil pupils	$600 × 1,000	per pupil pupils
	$1,150,000		$600,000	
LEA No. 3	$1,125 × 1,000	per pupil pupils	None.	
	$1,125,000			
Total neutral revenues	$4,529,000	=87.2 pct neutral		
Total State, intermediate, and local revenues	$5,195,000			

Thus, State A qualifies under § 222.64(a).

Example 2. State B in the prior year had an equalization program which required a 5 mill effort and allowed 5 mills additional leeway. For the required 5 mill effort each LEA was guaranteed $600 per pupil. LEA 2, on a wealth base of $60,000 per pupil, levied the full 10 mills producing $300 per pupil received $300 per pupil of State basic aid, and with the $300 per pupil leeway yield, had revenues of $900 per pupil. LEA #2, on a wealth base of $160,000 per pupil, also levied the full 10 mills producing $800 per pupil from the required 5 mills which exceed the guarantee and thus received no State basic aid. The 5 mill leeway yielded an additional $800 per pupil for a total of $1,600 per pupil.

The State has instituted a new program raising the guarantee to $900 per pupil with a 10 percent budget increase limitation. LEA #1, (with 2,000 pupils), now realizes $300 per pupil from its required effort, receives $600 of State basic aid, received $300 per pupil 1.5 mills of local leeway for a yield of $90 per child because of its budget restraint of $990 per child. ($900 per child plus 10 percent). LEA #2 (with 1,000 pupils), realizes $800 per pupil from its required effort, receives $100 per pupil in State equalization aid, levies 5 mills leeway for another $800 per pupil for a total of $1,700 per pupil which is still within its budget increase limitation of $1,760 per pupil.

Assuming that no other LEA is restrained below the $900 per pupil guarantee and that LEA #1 is the most restrained at $90 per pupil leeway then all of the revenues of LEA #2 above that level are not neutral.

The percentage of neutrality for the State is calculated in the same way as in Example 1. Assuming there are no other LEA's, the percentage of wealth neutral revenues is 80.7, and State B does not qualify under

Example 3. State C has an equalization program under which each LEA is guaranteed $900 per weighted pupil or 110 percent of the prior year's per weighted pupil revenue under the program, whichever is less, minus the LEA contribution derived from a required tax which is uniform for all LEA's guaranteed $900 per pupil and proportionately less for those LEA's guaranteed lesser amounts per pupil. No additional local leeway taxes are allowed. LEA #1 received $850 per pupil under the program in the prior year while LEA #2 received $800 per pupil under the program in the prior year. LEA #1 is limited to the $900 guarantee since 110 percent of its prior year's expenditure exceeds the $900 guarantee. LEA #2 qualifies for an $880 guarantee since 110 percent of $800 equals $880. LEA #2's required tax effort is also proportionately less.

Assume that neither LEA realizes revenues in excess of the guarantee. For LEA #1 (with 10,000 pupils), $880 of the $900 per pupil revenue is wealth neutral and for LEA #2 (with 2,000 pupils), all $880 in per pupil revenue is wealth neutral. (See § 222.64(b)(2)(iii)).

The percentage of neutrality for the State would be calculated as in Example 1. The percentage of wealth neutral revenues is 98.2 and the State qualifies under § 222.64(a).

Example 4. State D has an equalization program which permits different local tax efforts from 1 mill to 10 mills and which guarantees $100 per pupil for each mill levied. LEA #1 taxes at 5 mills and realizes $300 per pupil. Since the guarantee level for 5 mills is $500 per pupil, State D gives LEA #1 $200 in equalization aid. LEA #2 also taxes at 5 mills, but realizes $800 per pupil. Since the guarantee for 5 mills is only $500 per pupil, LEA #2 receives no equalization aid. LEA #3 taxes at 8 mills and realizes $400 per pupil. Since the guarantee at 8 mills is $800 per pupil, LEA #3 receives $400 in equalization aid. LEA #4 taxes at 8 mills, and realizes $1,000 per pupil. Since the guarantee for 8 mills is only $800 per pupil, LEA #4 receives no equalization aid. All of the funds LEA #1 realized under the equalization program are neutral since there is no excess over the guaranteed amount for 5 mills. $300 per pupil of the funds realized by LEA #2 are not neutral, because that is the amount in excess of the amount guaranteed for a 5 mill tax effort under the equalization program, and is attributable to the greater wealth of LEA #2.

All of the funds realized by LEA #3 under the equalization program are neutral since there is no excess over the guaranteed amount for an 8 mill tax effort. $200 per pupil realized by LEA #4 is not neutral, because that is the amount in excess of the guaranteed amount for an 8 mill tax effort under the equalization program and is attributable to the greater wealth of LEA #4.

Example 5. State E has a foundation-type equalization program under which each LEA receives funds for a teacher salary, based on a salary schedule, for each 25 pupils in average daily attendance with additional teacher units allocated for small or sparsely populated districts, and special education programs such as handicapped and vocational classes. Each district also receives under the program a set amount of dollars per teacher unit for expenses other than salaries. Each LEA must make a tax effort of 10 mills to qualify for the foundation equalization aid. The yield from the 10 mills tax is deducted from the amount of the equalization guarantee. There are no State restrictions on budget, expenditure or tax effort increases over prior years. No LEA in the State realizes more than the guaranteed amount for the 10 mill effort. All of the funds realized by all LEAs under the foundation equalization program are neutral. Any excess in the amount of revenues realized by any agency over that realized by any other are attributable to differences in the designated needs. (See § 222.61(b)(3)).

4. *Determination under § 222.66 as to maximum proportion of Pub. L. 81-874 payments that may be taken into consideration by a State under an equalization program.*

[40 FR 16032, Apr. 8, 1975, as amended at 42 FR 65526, Dec. 30, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

PART 223—SPECIAL IMPACT AID PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM ENTITLEMENTS BASED ON THE NUMBER OF CHILDREN RESIDING ON INDIAN LANDS

Subpart A—General

Sec.
223.1 Purpose.
223.2 Applicability of regulations in this part.
223.3 Applicability of other statutes and regulations.
223.4 Definitions.
223.5 Entitlement based on the number of children residing on Indian lands.
223.6 Use of entitlement.
223.7 Requirements to receive entitlement.
223.8 Waiver of deadline for establishing policies and procedures.
223.9 [Reserved]

Subpart B—Policies and Procedures

223.10 Required policies and procedures.
223.11 Minimum standards for establishing policies and procedures.
223.12 Review by LEAs of policies and procedures.
223.13 Review by the Secretary of policies and procedures.
223.14-223.19 [Reserved]

Subpart C—Complaint Procedures

223.20 Contents of a complaint.
223.21 Who may file a complaint.
223.22 Where to file a complaint.
223.23 When to file a complaint.
223.24 Receipt of a complaint by the Assistant Secretary.
223.25 Dismissal of a complaint.
223.26 Consolidation of complaints.
223.27-223.29 [Reserved]

Subpart D—Hearing Procedures

223.30 Applicability of hearing procedures in this subpart.
223.31 Applicability of other laws.
223.32 Parties to a hearing.
223.33 Notice.
223.34 LEA's reply to the complaint.
223.35 General procedural rules.
223.36 Conduct of the hearing.
223.37 Opportunity to submit additional evidence.
223.38 The hearing examiner's findings and recommendations.
223.39 Opportunity to comment on the hearing examiner's findings and recommendations.

Sec.
223.40 The Assistant Secretary's final determination.
223.41 Judicial review of the Assistant Secretary's final determination.
223.42 Effects of noncompliance with the Assistant Secretary's final determination.

AUTHORITY: Sec. 5(b)(3) of Title I of the Act of September 30, 1950, Pub. L. 81-874, as amended by the Education Amendments of 1978, Pub. L. 95-561 (20 U.S.C. 240(b)(3)), unless otherwise noted.

SOURCE: 46 FR 7199, Jan. 22, 1981, unless otherwise noted.

Subpart A—General

§ 223.1 Purpose.

The purpose of this part is to—

(a) Clarify the requirements which local educational agencies (LEAs) must meet to receive an entitlement under Section 3(d)(2)(D) of the Act and § 223.5 of these regulations;

(b) Establish minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process;

(c) Describe the process that a tribe or its designee shall follow to file a complaint regarding those policies and procedures; and

(d) Establish hearing procedures to resolve complaints.

(20 U.S.C. 240(b)(3))

§ 223.2 Applicability of regulations in this part.

(a) The regulations in this part apply to LEAs that claim entitlements under § 223.5.

(b) (1) Except as provided in paragraph (b)(2) of this section, these regulations are designed to ensure participation in the LEA's education program by Indian tribes and parents of Indian children residing on Indian lands.

(2) For purposes of computing the entitlement only, the LEA shall count all children, including any non-Indian children, residing on Indian lands.

(20 U.S.C. 238(d)(2)(D); 20 U.S.C. 240(b)(3))

§ 223.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to LEAs that claim entitlements under § 223.5:

(a) Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81-874, as amended in 20 U.S.C. 236 *et seq.* particularly 240(b)(3).

(b) The Impact Aid regulations in 34 CFR Part 222 pertaining to LEAs in areas affected by Federal activity.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(20 U.S.C. 240(b)(3); 20 U.S.C. 1221 *et seq.*; 34 CFR Part 222)

§ 223.4 Definitions.

For purposes of this part, the following definitions apply:

"Act" means Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81-874, as amended. Significant amendments pertinent to this part were made by the Education Amendments of 1978, Pub. L. 95-561.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education or the Assistant Secretary's designee.

"Child" means any child who is within the age limits for which the applicable State provides free public education.

"Department" means the U.S. Department of Education.

"Entitlement" means, for purposes of this part, the amount of funds (or whatever portion of those funds that is provided by an appropriation) determined by the number of children residing on Indian lands in average daily attendance at the LEA multiplied by the local contribution rate multiplied by 125 percent.

"Indian children" means children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

"Indian lands" means—

(a) Real property held in trust by the United States for individual Indians or Indian tribes; and

(b) Real property held by individual Indians or Indian tribes that is subject to restrictions on alienation imposed by the United States.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Local educational agency (LEA)" means a board of education or other legally constituted local authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. This term includes any State agency which directly operates and maintains facilities for providing free public education.

"Parent" includes a legal guardian or other person standing in loco parentis.

"Preliminary payment" means a payment equal to 75 percent (or the percentage permitted by an appropriation) of the total impact aid payment received by the LEA for the preceding year.

"Secretary" means the Secretary of the U.S. Department of Education.

(20 U.S.C. 240(b)(3); 20 U.S.C. 244)

§ 223.5 Entitlement based on the number of children residing on Indian lands.

(a) To be eligible for an entitlement under this part, an LEA that serves children who reside on Indian lands shall meet—

(1) The eligibility requirements in Section 3(c) of the Act; and

(2) The requirements in § 223.7.

(b) If an LEA meets the requirements in paragraph (a) of this section, the Secretary pays the LEA the entitlement defined in § 223.4.

(c) Except as provided in § 223.8, if an LEA that serves children who reside on Indian lands does not meet the requirements in paragraph (a) of this section, the Secretary may not pay either—

(1) The entitlement defined in § 223.4; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 238(d)(2)(D); 20 U.S.C. 240(b)(3)(A))

§ 223.6 Use of entitlement.

An LEA that receives the entitlement referred to in § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children.

(20 U.S.C. 240(b)(3); H. Rept. 1137, 95th Cong., 2d Sess. 114 (1978))

§ 223.7 Requirements to receive entitlement.

To receive the entitlement referred to in § 223.5—

(a) An LEA formed before November 1, 1978 shall have complied with the requirements under Section 5(b)(3) of the Act for establishing policies and procedures by the end of the 1979-1980 school year; or

(b) An LEA formed after November 1, 1978 shall—

(1) Establish the policies and procedures described in §§ 223.10-223.11, in consultation with and based on information from tribal officials and parents of Indian children, within one year of its formation; and

(2) Include in its application for payments under the Act—

(i) An assurance that the LEA established these policies and procedures in consultation with and based on information from tribal officials and parents of Indian children; and

(ii) A copy of the policies and procedures.

(20 U.S.C. 240(b)(3)(A))

§ 223.8 Waiver of deadline for establishing policies and procedures.

(a) (1) If an LEA cannot meet its deadline in § 223.7 for establishing policies and procedures, the LEA may request the Secretary to waive that deadline and set a new one.

(2) The LEA's request for a waiver must—

(i) Be in writing;

(ii) Provide a full justification of the need for a waiver;

(iii) Indicate when policies and procedures can be established; and

(iv) Include any supporting information the Secretary may require.

(b) (1) The Secretary may waive the deadline in § 223.7 for establishing policies and procedures and set a new one if the LEA shows good cause.

(2) In determining whether the LEA has shown good cause, the Secretary considers the following factors:

(i) The progress of the LEA in establishing its policies and procedures.

(ii) Administrative obstacles faced by the LEA in establishing its policies and procedures.

(iii) Exceptional or unforeseen circumstances.

(c) If the Secretary decides to grant the LEA's request for a waiver, the Secretary may vary the method for paying the LEA's entitlement under § 223.5, depending on the circumstances underlying the waiver request. The methods available to the Secretary include the following:

(1) Pay the LEA the full entitlement for the current year in which the Secretary grants the waiver.

(2) Grant the waiver but pay the LEA the full entitlements for past years retroactively when the LEA establishes it policies and procedures.

(3) Grant the waiver but only pay the entitlement prospectively from the year in which the LEA establishes policies and procedures.

(d) If the Secretary denies the LEA's request for a waiver, the Secretary may not pay either—

(1) The entitlement referred to in § 223.5; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 240(b)(3)(A))

§ 223.9 [Reserved]

Subpart B—Policies and Procedures

§ 223.10 Required policies and procedures.

The policies and procedures required under §223.7 must ensure that an LEA that serves children residing on Indian lands—

(a) Gives tribal officials and parents of Indian children the opportunity to comment on the participation of

Indian children on an equal basis in the school program with all other children educated by the LEA;

(b) Disseminates to tribal officials and parents of Indian children—

(1) The Pub. L. 81-874 application;

(2) Any evaluations of education programs assisted with funds provided under the Act; and

(3) Any program plans for education programs that the LEA plans to initiate or eliminate;

(c) Consults actively and involves regularly tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act; and

(d) Affords tribal officials and parents of Indian children an opportunity to—

(1) Make recommendations concerning—

(i) The needs of their children; and

(ii) The ways by which they can assist their children in realizing the benefits to be derived from the education programs assisted with funds provided under the Act; and

(2) Present their overall views on the education program in the LEA, including—

(i) The operation of the LEA's education program; and

(ii) The degree of parental participation allowed.

(20 U.S.C. 240(b)(3)(B))

§ 223.11 Minimum standards for establishing policies and procedures.

To accomplish the objectives in § 223.10, an LEA's policies and procedures must include, at a minimum—

(a) Specific procedures for how the LEA will—

(1) Give tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the education program;

(2) Assess the extent to which Indian children do participate on an equal basis; and

(3) Modify its education program to allow Indian children to participate on an equal basis;

(b) Specific procedures for disseminating the information required in § 223.10(b). This dissemination must—

(1) Take place in a timely manner; and

(2) Ensure that tribal officials and parents of Indian children have had adequate time and opportunity to present their views;

(c) A description of how the LEA will actively consult and regularly involve tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act;

(d) A description of the LEA's methods to afford tribal officials and parents of Indian children the opportunity to make recommendations and to present their views as provided in § 223.10(d). This description should include specific ways the LEA will gather information concerning Indian views, including the frequency, location, and time of meetings; and

(e) Specific procedures for—

(1) Assessing the meaningfulness of Indian input; and

(2) Modifying the LEA's policies and procedures, if necessary, based on that input.

(20 U.S.C. 240(b)(3)(B); 20 U.S.C. 1221e-3(a)(1); H. Rept. 1137, 95th Cong., 2d Sess. 114-115 (1978))

§ 223.12 Review by LEAs of policies and procedures.

(a) Each LEA that has established policies and procedures under § 223.7 shall review those policies and procedures annually to ensure that they—

(1) Meet the minimum standards in § 223.11; and

(2) Continue to provide for an adequate level of Indian participation.

(b) If an LEA determines that its policies and procedures do not meet the requirements in paragraph (a) (1)-(2) of this section, the LEA shall amend its policies and procedures to conform with those requirements.

(c) An LEA that must amend its policies and procedures under paragraph (b) of this section shall send a copy of those amended policies and procedures to—

(1) The Secretary; and

(2) The affected tribe or tribes.

(20 U.S.C. 1221e-3(a)(1))

§ 223.13 Review by the Secretary of policies and procedures.

(a) The Secretary periodically reviews an LEA's policies and procedures to ensure that they meet the minimum standards in § 223.11.

(b) If the Secretary determines that the LEA's policies and procedures do not meet the minimum standards in § 223.11, the LEA shall make the necessary changes within 60 days after receiving the Secretary's determination.

(c) If the LEA fails to correct its policies and procedures within 60 days, the Secretary withholds the LEA's entitlement according to § 223.42(b).

(20 U.S.C. 1221e-3(a)(1))

§§ 223.14-223.19 [Reserved]

Subpart C—Complaint Procedures

§ 223.20 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an LEA has failed to—

(1) Establish adequate policies and procedures under §§ 223.10-223.11 to ensure the participation of Indian parents and tribes in the education process;

(2) Adhere to these policies and procedures; or

(3) Take into consideration meaningful Indian input in designing the education program;

(b) Information that supports the allegation;

(c) A specific request for relief; and

(d) A statement describing what steps it has taken under § 223.23(b) to resolve with the LEA the matters on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1); H. Rept. 1137, 95th Cong., 2d Sess. 115 (1978))

§ 223.21 Who may file a complaint.

(a) (1) Any tribe, or its designee, that has students attending an LEA's school may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Assistant Secretary regarding any action of the LEA pursuant to, or relevant to, the matters in § 223.20(a).

(2) If a tribe files a complaint through a designee, the tribe shall acknowledge in writing in the complaint that the designee is authorized to act on its behalf.

(b) (1) Parents of Indian children may not file a complaint directly with the Assistant Secretary.

(2) These parents shall submit their grievances to the tribe or its designee, although neither the tribe nor its designee is obligated to file these grievances in a complaint with the Assistant Secretary.

(c) A complaint filed under paragraph (a) of this section need not reflect the views of a majority of the parents of Indian children attending the LEA's schools.

(20 U.S.C. 240(b)(3)(C)(i); H. Rept. 1137, 95th Cong., 2d Sess. 115 (1978))

§ 223.22 Where to file a complaint.

To file a complaint, a tribe must—

(a) Designate the complaint "SAFA Indian Complaint"; and

(b) Send it to the Assistant Secretary for Elementary and Secondary Education.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.23 When to file a complaint.

A tribe may file a complaint with the Assistant Secretary only if—

(a) The LEA has complied with the requirements in § 223.7; and

(b) The tribe has taken reasonable steps to resolve with the LEA the issues on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.24 Receipt of a complaint by the Assistant Secretary.

The Assistant Secretary considers a complaint to have been received only after the Assistant Secretary determines that the complaint—

(a) Satisfies the requirements in §§ 223.20-223.21 and § 223.23; and

(b) Is in writing and signed by a tribal official or the tribe's authorized designee.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.25 Dismissal of a complaint.

(a) If the Assistant Secretary determines that a complaint fails to meet the requirements in § 223.24, the Assistant Secretary notifies the tribe or its designee that the complaint has been dismissed for purposes of invoking the hearing procedures in §§ 223.30-223.41.

(b) Each notice that a complaint has been dismissed includes the reasons why the Assistant Secretary determined that the complaint did not meet the requirements in § 223.24.

(c) Notice that a complaint has been dismissed does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.26 Consolidation of complaints.

The Assistant Secretary may consolidate complaints involving the same tribe or LEA.

(20 U.S.C. 240(b)(3)(C)(viii))

§§ 223.27-223.29 [Reserved]

Subpart D—Hearing Procedures

§ 223.30 Applicability of hearing procedures in this subpart.

The hearing procedures in this subpart apply only to proceedings under Section 5(b)(3)(C) of the Act.

(20 U.S.C. 240(b)(3)(C)

§ 223.31 Applicability of other laws.

The following provisions do not apply to proceedings under this subpart:

(a) Administrative Procedure Act.

(b) Federal Rules of Civil Procedure.

(c) Federal Rules of Evidence.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e-3(a)(1))

§ 223.32 Parties to a hearing.

The parties to a hearing under this subpart are—

(a) The complaining tribe or tribes; and

(b) The affected LEA or LEAs.

(20 U.S.C. 240(b)(3)(C)

§ 223.33 Notice.

Within 10 working days after receiving a complaint, the Assistant Secretary—

(a) Appoints a hearing examiner to conduct the hearing;

(b) Selects a time for the hearing so that the hearing occurs no more than 30 days after the appointment of a hearing examiner;

(c) Designates a place for the hearing that is, to the extent possible—

(1) Near the LEA; or

(2) At another location convenient to the tribe and the LEA, if the Assistant Secretary determines there is good cause to designate another location;

(d) Notifies the tribe and the LEA of the time, place, and nature of the hearing; and

(e) Sends copies of the complaint to the LEA and the tribe.

(20 U.S.C. 240(b)(3)(C)(ii))

§ 223.34 LEA's reply to the complaint.

Within 15 days after receiving the notice described in § 223.33, the LEA shall file with the Assistant Secretary its reply to the charges in the complaint.

(20 U.S.C. 1221e-3(a)(1))

§ 223.35 General procedural rules.

(a) *Communications.* No party shall communicate orally or in writing with the hearing examiner or the Assistant Secretary on matters under review, except minor procedural matters, unless all parties to the complaint are given—

(1) Timely and adequate notice of the communication; and

(2) Reasonable opportunity to respond.

(b) *Submission of documents.* For each document that a party submits, the party shall—

(1) File one copy for inclusion in the record of the proceedings; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) *Record.* A record of the proceedings will be established and maintained by the Assistant Secretary.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e-3(a)(1))

§ 223.36 Conduct of the hearing.

(a) *Public hearing.* The hearing must be open to the public.

(b) *Representation by counsel.* Parties may be represented by counsel.

(c) *Evidence.* (1) Each party may submit oral and written testimony that is relevant to the issues in the proceedings.

(2) A party may object to evidence it considers to be irrelevant or unduly repetitious.

(d) *Authority and responsibilities of the hearing examiner.* (1) The hearing examiner may regulate the course of the proceedings and the conduct of the parties during those proceedings. The hearing examiner takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(i) The hearing examiner may clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the complaint.

(ii) The hearing examiner may direct the parties to exchange relevant documents or information.

(iii) The hearing examiner may receive, rule on, exclude, or limit evidence.

(iv) Although hearings are open to the general public, the hearing examiner may establish reasonable rules governing public attendance at the proceedings.

(v) The hearing examiner may examine witnesses.

(2) The hearing examiner may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(e) *Transcripts.* (1) The Assistant Secretary—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the proceedings; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reporting service's reproduction fee.

(f) *Hearing costs.* Each party shall bear only its own costs in the proceeding.

(20 U.S.C. 240(b)(3)(C)(iii)-(iv); 20 U.S.C. 1221e-3(a)(1))

§ 223.37 Opportunity to submit additional evidence.

(a) Each party may submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing.

(b) The hearing examiner must receive each party's additional evidence within 10 days after the hearing.

(20 U.S.C. 1221e-3(a)(1))

§ 223.38 The hearing examiner's findings and recommendations.

Within 30 days after the hearing, the hearing examiner—

(a) Makes, on the basis of the record, written findings of fact and recommendations concerning any appropriate remedial action that should be taken;

(b) Submits those findings and recommendations, along with the hearing record, to the Assistant Secretary; and

(c) Sends a copy of those findings and recommendations to each party.

(20 U.S.C. 240(b)(3)(C)(v); 20 U.S.C. 1221e-3(a)(1))

§ 223.39 Opportunity to comment on the hearing examiner's findings and recommendations.

(a) Each party may file with the Assistant Secretary comments on the hearing examiner's findings and recommendations.

(b) The Assistant Secretary must receive each party's comments within 10 days after the party receives a copy of the hearing examiner's findings and recommendations.

(20 U.S.C. 1221e-3(a)(1))

§ 223.40 The Assistant Secretary's final determination.

(a) Within 30 days after receiving the hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a) of this section, the Assistant Secretary sends the parties a copy of—

(1) The hearing record;

(2) The hearing examiner's findings and recommendations; and

(3) The Assistant Secretary's final determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint.

(20 U.S.C. 240(b)(3)(C)(vi)-(vii))

§ 223.41 Judicial review of the Assistant Secretary's final determination.

If a party is dissatisfied with the Assistant Secretary's final determination, the party may seek judicial review before a court of competent jurisdiction.

(20 U.S.C. 240(b)(3)(C)(vii))

§ 223.42 Effects of noncompliance with the Assistant Secretary's final determination.

(a) *Determination of compliance.* (1) For an LEA that was required under §§ 223.40-223.41 to undertake remedial action, the Secretary determines whether the LEA has—

(1) Undertaken the required remedial action; or

(2) Failed to undertake the remedial action within the time established and the Secretary determines that an extension of time will not effectively encourage the required remedial action.

(b) *Withholding by the Secretary.* (1) Except as provided in paragraphs (b)(1)(i)-(ii) of this section, if the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the Secretary withholds payment of all funds to which an LEA is entitled under Section 3(d)(2)(D) of the Act until that remedial action is undertaken.

(i) The Secretary does not withhold funds if the tribe or its designee requests in writing that these funds be released to the LEA.

(ii) The Secretary may not withhold funds during the course of the school year if the Secretary determines that a withholding would substantially disrupt the education programs of the LEA.

(2) If an LEA is aggrieved by the Secretary's action under paragraph (b)(1) of this section, the LEA may request a hearing under Section 5(g) of the Act.

(c) *Election of alternative services by the tribe.* (1) If the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the affected tribe may elect to—

(i) Contract with the Bureau of Indian Affairs under Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (25 U.S.C. 450 *et seq.*) to provide educational services previously provided by the LEA; or

(ii) Have a Bureau of Indian Affairs' school provide those educational services.

(2) (i) If the affected tribe exercises its option under paragraph (c)(1) of this section, any Indian students affiliated with that tribe who wish to remain in attendance at the LEA against whom the complaint was filed may be counted by the LEA for the purpose of receiving funds under Section 3(d)(2)(D) of the Act.

(ii) If Indian students remain affiliated with the LEA under paragraph (c)(2)(i) of this section—

(A) The Secretary may not withhold funds under paragraph (b)(1) of this section that are based on the number of Indian students who remain affiliated with the LEA; and

(B) The tribe may not file any further complaints with respect to these Indian students.

(20 U.S.C. 240(b)(3)(D)-(E); 20 U.S.C. 240 note)

PART 230—ASBESTOS DETECTION AND CONTROL: LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.

230.1 Asbestos Detection and Control: Local Educational Agencies.

230.2 Who is eligible for assistance under these programs?

230.3 What regulations apply to these programs?

230.4 What definitions apply to these programs?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

Subpart C—How Does One Apply Under These Programs?

230.20 How does one apply for a grant under the LEA Asbestos Detection Program?

230.21 How does one apply for a loan under the LEA Asbestos Control Program?

230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?

230.23 What records must an LEA maintain?

Subpart D—How Does the Secretary Make an Award?

230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?

230.31 What criteria does the Secretary apply in selecting loan recipients?

230.32 How does the Secretary determine the amount of a loan for an asbestos control project?

230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?

230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

Subpart E—What Conditions Must Be Met by a Recipient?

PROCEDURES AND STANDARDS FOR AN ASBESTOS DETECTION PROJECT

Sec.

230.40 What are the procedures for conducting an asbestos detection project?

230.41 What are the safety measures for conducting an asbestos detection project?

230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?

230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?

230.44 [Reserved]

PROCEDURES AND STANDARDS FOR AN ASBESTOS CONTROL PROJECT

230.45 What are the procedures for containing or removing asbestos materials?

230.46 What are the procedures for replacing building materials and restoring school buildings?

230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?

230.48-230.49 [Reserved]

FISCAL REQUIREMENTS

230.50 What are the rules for repayment of a loan?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

230.60 What report must a grantee submit?

AUTHORITY: The Asbestos School Hazard Detection and Control Act of 1980. Pub. L. 96-270 (20 U.S.C. 3601-3611, 94 Stat. 487) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-88 (20 U.S.C. 3474(a), 93 Stat. 685).

SOURCE: 46 FR 4536, Jan. 16, 1981, unless otherwise noted.

Subpart A—General

§ 230.1 Asbestos Detection and Control: Local Educational Agencies.

The Asbestos Detection and Control Programs for Local Educational Agencies (LEAs) consist of—

(a) *LEA Asbestos Detection Program.* This program provides Federal grants to LEAs to identify asbestos hazards in school buildings; and

(b) *LEA Asbestos Control Program.* This program provides Federal interest-free loans to LEAs to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

(20 U.S.C. 3604(a)(1)(A); 20 U.S.C. 3605(a)(1) and (2))

§ 230.2 Who is eligible for assistance under these programs?

(a) (1) An LEA[1] is eligible for a grant under the LEA Asbestos Detection Program if that LEA proposes to conduct or has not completed before January 1, 1976 an asbestos detection project that is in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable.

(2) As used in paragraph (a)(1) of this section and throughout this part, the term "conformity" in reference to any asbestos detection project conducted prior to the effective date of these regulations means substantial conformity.

(b) (1) An LEA is eligible for a loan under the LEA Asbestos Control Program if that LEA—

(i) Has conducted an asbestos detection project in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable; and

(ii) Proposes to carry out or has not completed before January 1, 1976 an asbestos control project—

(A) In conformity with the procedures and standards in §§ 230.45 through 230.47, as applicable;

(B) Involving more than 2,500 square feet of surface in the school buildings in the LEA; and

(C) Meeting the criteria established by the Secretary under Section 7(a)(2) of the Act. These criteria will be established if appropriations become available for the LEA Asbestos Control Program.

(2) As used in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section and throughout this part, the term "conformity" in reference to any asbestos control project conducted prior to the date—which will be published in the FEDERAL REGISTER—when loan applications will be accepted means substantial conformity.

(20 U.S.C. 3604(a)(1)(A) and (b)(3); 20 U.S.C. 3605(a)(2) and (c)(1) and (3))

§ 230.3 What regulations apply to these programs?

(a) In addition to the regulations in this Part 230, the following regulations apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General) except the following definitions:

(i) Award.

(ii) Recipient.

(2) The regulations in 34 CFR Part 231 (Asbestos Detection and State Plan: State Educational Agencies).

(b) In addition to the regulations in paragraph (a) of this section, the LEA Asbestos Detection Programs is governed by the regulations in EDGAR, 34 CFR Part 75 (Direct Grant Programs) except the following:

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant program and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria)

(5) Sections 75.217 through 75.236 (pertaining to selection procedures and procedures for making a grant).

(20 U.S.C. 3474(a))

§ 230.4 What definitions apply to these programs?

The following definitions apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
EDGAR
Grant

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[1] (Note: As used in these programs, the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in §230.4(b))

Grantee
Nonprofit
Private
Project
Secretary
State educational agency (SEA)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Asbestos School Hazard Detection and Control Act of 1980 (Pub. L. 96-270).

"Asbestos" means—

(a) Chrysotile, amosite, or crocidolite; or

(b) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actionolite-asbestos.

"Asbestos control project" means activities—described in § 230.11—designed to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

"Asbestos detection project" means activities—described in § 230.10—designed to identify asbestos hazards in school buildings.

"Award" means—

(1) The amount of funds that the Secretary provides to a grantee under the LEA Asbestos Detection Program; or

(2) The amount of funds that the Secretary provides to an applicant for a loan under the LEA Asbestos Control Program.

"Friable" means able to be crumbled, pulverized, or reduced to powder by hand.

"Imminent hazard to the health and safety" means, with reference to asbestos, that the asbestos is contained in building material whose fibers could be released into a school building environment.

"Local educational agency" means—

(1) An LEA as defined in EDGAR, 34 CFR 77.1;

(2) The governing authority of a nonprofit private elementary or secondary school, as defined in Section 11 of the Act; or

(3) A school of an agency of the United States.

"Management system" is a system in which the condition of materials that contain asbestos is monitored to ascertain any changes in the materials that may require direct corrective action.

"Recipient" means—

(1) A grantee under the LEA Asbestos Detection Program; or

(2) An applicant that receives a loan under the LEA Asbestos Control Program.

"School buildings" means—

(1) Structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or school facilities used for the preparation of food;

(2) Gymnasiums or other facilities designed especially for athletic or recreational activities included in an academic course in physical education in the regular curriculum;

(3) Other facilities used for the instruction of students, for research, or for the administration of educational or research programs; or

(4) Maintenance, storage, or utility facilities essential to the operation of any of the facilities listed in paragraphs (1) through (3) of this definition.

"State" means—

(1) A State as defined in EDGAR, 34 CFR 77.1; and

(2) The Bureau of Indian Affairs.

(20 U.S.C. 3610; 20 U.S.C. 2854; 34 CFR 77.1)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

§ 230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

(a) The Secretary provides a grant to an eligible applicant under the LEA Asbestos Detection Program for the following activities conducted in accordance with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable:

(1) Making a visual inspection of school buildings to detect friable building materials.

(2) Collecting samples of the friable building materials referred to in paragraph (a)(1) of this section, including insulation materials.

(3) Analyzing the samples referred to in paragraph (a)(2) of this section to determine the presence of asbestos and the level of asbestos content.

(4) Determining the extent of the imminent hazards posed by the asbestos referred to in paragraph (a)(3) of this section by evaluating the likelihood of the release of fibers of that asbestos into the school environment.

(b) If appropriate, the Secretary may also provide funds for administrative costs incurred in the preparation and supervision of the LEA Asbestos Detection Program.

(20 U.S.C. 3604(b)(4))

§ 230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

(a) The Secretary provides a loan to an eligible applicant under the LEA Asbestos Control Program for the following activities conducted in accordance with the procedures and standards in §§ 230.45 through 230.47, as applicable:

(1) Containing or removing school building materials that contain asbestos posing an imminent hazard to the health and safety of school children and school employees.

(2) Replacing the removed materials referred to in paragraph (a) of this section with other appropriate building materials.

(3) Making repairs the Secretary considers necessary to restore school buildings to conditions comparable to those that existed before the activities in paragraphs (a) (1) and (2) of this section were carried out.

(b) The Secretary does not provide loans for an asbestos management system.

NOTE: Although the asbestos control program does not fund asbestos management systems, the Secretary and the Asbestos Hazards School Safety Task Force encourage schools to carefully consider this alternative before engaging in costly control projects. These projects may not be funded if a management system is more appropriate and cost-effective.

CROSS-REFERENCE: 34 CFR 230.31.

(20 U.S.C. 3605(a)(2))

Subpart C—How Does One Apply Under These Programs?

§ 230.20 How does one apply for a grant under the LEA Asbestos Detection Program?

(a) To apply for a grant under the LEA Asbestos Detection Program, an applicant must file with the Secretary an application that—

(1) Meets the requirements of—

(i) EDGAR, 34 CFR 75.109 and 75.110; and

(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEA to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings under the jurisdiction of the applicant agency;

(3) Contains an estimate of the total cost of the detection project, including whatever detailed descriptions of the costs of each component of the project the Secretary may require;

(4) Designates the party that will conduct the detection project and describes that party's qualifications for conducting that project;

(5) Contains assurances that—

(i) The project will be carried out in conformity with the requirements in §§ 230.40 through 230.42;

(ii) Any party employed to carry out the project will satisfy the competency standards established under § 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b) An applicant for a grant for an asbestos detection project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604(b)(1) and (3); 34 CFR 75.109-110; 34 CFR 75.112-115)

§ 230.21 How does one apply for a loan under the LEA Asbestos Control Program?

(a) To apply for a loan under the LEA Asbestos Control Program, an applicant must file with the Secretary an application containing—

(1) All information the Secretary may require, including information describing—

(i) The nature of the asbestos problem for which the loan is sought;

(ii) The asbestos content of the material to be contained or removed by the LEA, as determined from the results of an asbestos detection project conducted in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable;

(iii) The methods to be used to contain or remove the asbestos materials, in conformity with the requirements in §§ 230.45 through 230.47, as applicable; and

(iv) Any other pertinent details relating to the control project; and

(2) Assurances that—

(i) The LEA conducting the asbestos control project—

(A) Will notify in writing any employee engaged in any activity to carry out the project of the hazards of working with asbestos; and

(B) Will require each employee to use all appropriate safety procedures to minimize health risks;

(ii) The LEA will not permit a child, or a school employee not engaged in asbestos containment, removal, or replacement activity to be in the vicinity of such activity; and

(iii) The LEA will pay employees engaged in containment, removal, or replacement activities to carry out the asbestos control project, reasonable rates of pay, as established by the Secretary on the basis of prevailing wage rates in the location of that work.

(b) An applicant for a loan for an asbestos control project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.45 through 230.47, as applicable.

(20 U.S.C. 3605(c)(1) and (3))

§ 230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?

(a) If an LEA believes that it has limited resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award, the LEA may submit to the Secretary, together with its application, a request for a grant or loan greater than the amount provided by the Secretary under §§ 230.30 or 230.32.

(b) The LEA shall include in its request for an increased award information that substantiates its claim of limited financial resources. This may include the most recently available data describing any applicable factors listed in § 230.33(b).

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3); 20 U.S.C. 3474(a))

§ 230.23 What records must an LEA maintain?

An LEA that applies for a grant under the LEA Asbestos Detection Program or a loan under the LEA Asbestos Control Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the LEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3605(c)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?

(a) Except as provided in §§ 230.33 and 230.34, the Secretary makes a grant equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos detection project.

(b) (1) The amount awarded by the Secretary is the Federal share of the grantee's project.

(2) This applies whether Federal funds for the project are paid—

(i) Directly to the LEA;

(ii) To the SEA under 34 CFR Part 231 for reimbursement of funds it has paid to the LEA for this project; or

(iii) To both the LEA and the SEA.

(20 U.S.C. 3604(a)(2) and (a)(1)(B))

§ 230.31 What criteria does the Secretary apply in selecting loan recipients?

In selecting loan recipients under the LEA Asbestos Control Program, the Secretary applies the following criteria:

(a) (1) The likelihood of release of asbestos fibers into a school environment, as determined under the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations; or

(2) Any other evidence of the extent of the hazards caused by the presence of asbestos.

(b) (1) The extent to which the corrective action proposed by the applicant will reduce the imminent hazards to the health and safety of school children and school employees; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was successful in reducing imminent hazards to the health and safety of school children and school employees.

(c) (1) The extent to which the corrective action proposed by the applicant is cost-effective compared to other techniques including management of material containing asbestos; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was cost-effective compared to other techniques, including management of material containing asbestos.

(20 U.S.C. 3606(a)(2))

§ 230.32 How does the Secretary determine the amount of a loan for an asbestos control project?

Except as provided in §§ 230.33 and 230.34, the Secretary may make an interest-free loan equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos control project.

(20 U.S.C. 3605(a)(2))

§ 230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?

(a) The Secretary may increase the amount of a grant or loan if the Secretary determines that an eligible LEA has limited financial resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award.

(b) The Secretary considers one or more of the following factors in making the determination described in paragraph (a) of this section:

(1) A measure of financial need used by the State in which the LEA is located.

(2) The per capita income of the LEA or county.

(3) The local school millage rate compared with the millage rate that the State determines to be reasonable for that LEA or county.

(4) The ratio, expressed as a percentage, of the cost of the project to the total budget of the LEA.

(5) Any other factor that demonstrates that the LEA has limited financial resources.

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3))

§ 230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

(a) If appropriations under the LEA Asbestos Detection Program or the LEA Asbestos Control Program do not meet the levels of assistance described in §§ 230.30 and 230.32, the Secretary determines which applicant LEAs have the greatest financial need for receiving funds to conduct asbestos detection or control activities.

(b) In making the determination described in paragraph (a) of this section, the Secretary considers:

(1) One or more of the factors in paragraph (b) of § 230.33; and

(2) One or more of the following factors:

(i) The square footage of the structures to be included in the project compared with the total square footage of school buildings in the LEA.

(ii) The known or estimated asbestos content in friable building materials used in the LEA's school buildings.

(iii) The likelihood of release of asbestor fibers in building materials used in the LEA's school buildings.

(iv) The number of persons using the LEA's school buildings who are or will be exposed to asbestos that poses an imminent hazard.

(v) Any other factor that demonstrates the extent of the LEA's financial need for receiving funds to conduct asbestos detection or control activities.

(20 U.S.C. 3611(c); 20 U.S.C. 1226a)

Subpart E—What Conditions Must Be Met by a Recipient?

PROCEDURES AND STANDARDS FOR AN ASBESTOS DETECTION PROJECT

§ 230.40 What are the procedures for conducting an asbestos detection project?

In conducting an asbestos detection project, a grantee under the LEA Asbestos Detection Program shall adhere to the following procedures:

(a) For making a visual inspection of school buildings, the procedures in Part I of Appendix A.

(b) For sampling friable materials, the procedures in Part II of Appendix A.

(c) For analyzing friable materials to determine their asbestos content, the procedures in Part III of Appendix A.

(d) For evaluating the likelihood of release of asbestos fibers, the procedures referred to in § 230.42.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.41 What are the safety measures for conducting an asbestos detection project?

A grantee under the LEA Asbestos Detection Program shall comply with the best available safety measures for conducting its asbestos detection project. A grantee is considered by the Secretary to be in compliance with this section if that grantee adheres to the following safety measures:

(a) Material is sampled only when the area in which that material is located is not in use.

(b) Only persons needed for sampling are present.

(c) The sampling container is held away from the face during the actual collection of the sample.

(d) The material is not disturbed more than is necessary.

NOTE: The Secretary and the Task Force recommend that when persons take bulk samples, they use respirators or other respiratory protection.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?

A grantee under the LEA Asbestos Detection Program shall apply the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations to evaluate the likelihood of the release of asbestos fibers into a school environment.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?

(a) A grantee under the LEA Asbestos Detection Program may, if it so chooses, select a contractor to carry out any or all of the activities under the grantee's asbestos detection project.

(b) A grantee that selects a contractor to carry out any or all of the activities under the grantee's asbestos detection project shall determine the qualifications of that contractor by applying the following standards:

(1) For making a visual inspection of school buildings, the contractor's knowledge of and ability to comply with the procedures in Part I of Appendix A.

(2) For sampling friable materials, the contractor's knowledge of and ability to comply with the procedures in Part II of Appendix A.

(3) (i) For analyzing friable materials to determine their asbestos content, the contractor's knowledge of and ability to comply with the analytic techniques in Part III of Appendix A.

(ii) In addition, the Secretary encourages the grantee to consult the results of the Asbestos Analytic Laboratory Proficiency Program developed by the Environmental Protection Agency (EPA), which assessed the ability of participating laboratories to analyze materials for asbestos.

(iii) The Secretary makes available to SEAs on request the results of the analytical proficiency program referred to in paragraph (b)(3)(ii) of this section.

(4) (i) For evaluating the likelihood of release of asbestos fibers, the contractor's knowledge of and familiarity with the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's—

(A) Experience with the guidance system referred to in paragraph (b)(4)(i) of this section; and

(B) Past participation in training programs for using the guidance system or an EPA algorithm.

(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in applying the guidance system referred to paragraph (b)(4)(i) of this section.

(c) The Secretary encourages a grantee to consider hiring a different contractor to carry out the grantee's control activities than the one the grantee hired to carry out its detection activities.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.44 [Reserved]

Procedures and Standards for an Asbestos Control Project

§ 230.45 What are the procedures for containing or removing asbestos materials?

(a) A recipient of a loan under the LEA Asbestos Control Program shall comply with the applicable procedures in Appendix C of these regulations if the asbestos control project involves—

(1) Removal of asbestos materials; or

(2) Containment of asbestos materials and there is a significant risk of friable materials being released in the air.

(b) If the asbestos control project involves containment of asbestos materials and there is *no* significant risk of friable materials being released in the air, less restrictive procedures than those in Appendix C may be appropriate. Nevertheless, the Secretary recommends in this case that the recipient follow the applicable procedures in Appendix C.

(20 U.S.C. 3606(b)(1) and (c))

§ 230.46 What are the procedures for replacing building materials and restoring school buildings?

(a) In replacing building materials and restoring a school building to its previous condition, the recipient of a loan under the LEA Asbestos Control Program shall use materials that do not pose an imminent hazard to the health and safety of school children and school employees.

(b) In conducting replacement and restoration activities, the recipient of a loan shall use the most appropriate method. This method should be the most cost-effective.

(c) In conducting restoration activities, the recipient of a loan under the LEA Asbestos Control Program may use those funds to make only those repairs the Secretary considers necessary to restore a school building to a condition comparable to the condition that existed before the recipient carried out activities in § 230.11(a)(1).

(20 U.S.C. 3606(b)(1))

§ 230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?

(a) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to contain or remove asbestos materials as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's—

(1) Knowledge of and ability to comply with EPA's National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.01 through 61.25;

(2) Knowledge of and ability to comply with the standards in the Oc-

cupational Safety and Health Act (OSHA) asbestos regulations, 29 CFR 1910.1001;

(3) (i) Knowledge of and ability to comply with the containment and removal practices described in Appendix C of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's experience in carrying out asbestos containment and removal operations and past participation in training programs for proper containment and removal operations.

(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in carrying out proper containment and removal operations.

(b) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to replace building materials and restore school buildings as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's knowledge of and ability to comply with the requirement of § 230.46(a).

(20 U.S.C. 3606 (b)(2) and (c))

§§ 230.48-230.49 [Reserved]

FISCAL REQUIREMENTS

§ 230.50 What are the rules for repayment of a loan?

The following provisions apply to an interest-free loan to an LEA under the LEA Asbestos Control Program:

(a) The loan period begins on the effective date of the loan agreement.

(b) The LEA shall repay the loan within the period determined by the Secretary, but not to exceed 20 years.

(c) All other terms and conditions of the loan are contained in a loan agreement that the Secretary prepares and sends to the LEA.

(20 U.S.C. 3605(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 230.60 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR Part 75, a grantee under the LEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds used to carry out the grantee's asbestos detection project; and

(b) A description of—

(1) The detection activities that the grantee conducted;

(2) The results of the asbestos detection project, incuding any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The grantee's plans for correcting any imminent asbestos hazards that it detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

NOTE: Information in the following part—34 CFR Part 231—has a direct bearing on programs carried out under this Part 230. Readers are encouraged to read the following part for that information.

PART 231—ASBESTOS DETECTION AND STATE PLAN: STATE EDUCATIONAL AGENCIES

Subpart A—General

Sec.
231.1 Asbestos Detection and State Plan: State Educational Agencies.
231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?
231.3 What regulations apply to this part?
231.4 What definitions apply to this part?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?
231.21 In what circumstances may an SEA apply for a grant greater than 50 percent?

Sec.
231.22 What records must an SEA maintain?

Subpart D—How Does the Secretary Make an Award?

231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?
231.31 In what circumstances may the Secretary award a grant greater than 50 percent?
231.32 What criteria does the Secretary apply if appropriations do not meet the 50 percent level of assistance?

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

231.50. What report must a grantee submit?

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

231.70 What must a State plan contain?
231.71 What information must a State distribute to its LEAs?
231.72 What records must a State maintain?
231.73 What reports must a State submit?
APPENDIX A—PROCEDURES FOR CONDUCTING ASBESTOS DETECTION PROJECTS
APPENDIX B—GUIDANCE SYSTEM FOR ASSESSING POTENTIAL ASBESTOS PROBLEMS IN SCHOOLS
APPENDIX C—PROCEDURES FOR CONTAINING AND REMOVING BUILDING MATERIALS CONTAINING ASBESTOS

AUTHORITY: The Asbestos School Hazard Detection and Control Act of 1980, Pub. L. 96-270 (20 U.S.C. 3601-3611, 94 Stat. 487) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-88 (20 U.S.C. 3474(a), 93 Stat. 685).

SOURCE: 46 FR 4541, Jan. 16, 1981, unless otherwise noted.

Subpart A—General

§ 231.1 Asbestos Detection and State Plan: State Educational Agencies.

The Asbestos Detection Program and State Plan for State Educational Agencies (SEAs) consists of—

(a) *SEA Asbestos Detection Program.* This program provides Federal grants to SEAs to reimburse those States that have made or are making grants to their local educational agencies (LEAs)[1] to conduct asbestos detection projects; and

(b) *State Plan.* The SEA of any State that receives Federal funds for the administration of any applicable program—as defined in Section 400(c)(1)(A) of the General Education Provisions Act—shall submit to the Secretary a plan as described in Subpart H of these regulations. Under the Asbestos School Hazard Detection and Control Act of 1980, the SEA shall submit this plan regardless of whether the SEA or its LEAs participate in the SEA or LEA asbestos detection programs.

(20 U.S.C. 3604(a)(1)(B); 20 U.S.C. 3603(a))

§ 231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?

An SEA is eligible for a grant under the SEA Asbestos Detection Program if the State—through the SEA or other appropriate State agency—has made or is making grants to its LEAs to conduct asbestos detection projects—

(a) Conducted on or after the effective date of these regulations in conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable; or

(b) Conducted prior to the effective date of these regulations, but not completed before January 1, 1976, in substantial conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604(a) (B); and (b)(3))

§ 231.3 What regulations apply to this part?

In addition to the regulations in this Part 231, the following regulations apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General) except the following:

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[1](Note: As used in this part the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in 34 CFR 230.4(b))

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant programs and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria).

(5) Sections 75.217 through 75.236 (pertaining to selection procedures and procedures for making a grant).

(b) The regulations in 34 CFR Part 230 (Asbestos Detection and Control: Local Educational Agencies).

(20 U.S.C. 3474(a))

§ 231.4 What definitions apply to this part?

The following definitions apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Recipient
Secretary
State educational agency (SEA).

(b) *Definitions in 34 CFR Part 230.* The definitions in 34 CFR 230.4(b) (the definitions section of Asbestos Detection and Control: Local Educational Agencies) apply also to this Part 231 except the following:

Award
Recipient.

(c) As used in this part, the term "State plan" or "plan" means the plan referred to in § 231.1(b) and described in Subpart H of these regulations.

(20 U.S.C. 3610; 20 U.S.C. 2854; 34 CFR 77.1)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

§ 231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?

(a) To apply for a grant under the SEA Asbestos Detection Program, an SEA must file with the Secretary an application that—

(1) Meets the requirements of—

(i) EDGAR, 34 CFR 75.109 and 75.110; and

(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEAs receiving grants from the State to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings of the LEA;

(3) Contains an estimate of the total cost of LEA detection projects receiving grants from the State, including whatever detailed descriptions of the costs of the components of the projects the Secretary may require;

(4) Designates the parties conducting LEA detection projects that receive grants from the State, and describes those parties' qualifications for conducting those projects;

(5) Contains assurances that LEA detection projects receiving grants from the State are being carried out in conformity with the requirements in 34 CFR 230.40 through 230.42, and that parties employed to carry out those projects satisfy the competency standards established under 34 CFR 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b) (1) For asbestos detection projects conducted by its LEAs prior to the effective date of these regulations, but not completed before January 1, 1976, an assurance by the SEA that the LEAs conducted those projects in substantial conformity with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable; and

(2) For asbestos detection projects conducted by its LEAs on or after the effective date of these regulations, an assurance by the SEA that the LEAs conducted those projects in compliance with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604 (b)(1); and (b)(3); 34 CFR 75.109-75.110; 34 CFR 75.112-75.115)

§ 231.21 In what circumstances may an SEA apply for a grant greater than 50 percent?

(a) If an SEA believes that it has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award, the SEA may submit to the Secretary, together with its application, a request for a grant greater than the amount provided by the Secretary under § 231.30.

(b) The SEA shall include in its request for an increased award information that substantiates its claim of limited financial resources.

(20 U.S.C. 3604(a); 20 U.S.C. 3474(a))

§ 231.22 What records must an SEA maintain?

An SEA that applies for a grant under the SEA Asbestos Detection Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the SEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?

(a) Except as provided in §§ 231.31 and 231.32, the Secretary makes a grant to an SEA equal to 50 percent of that State's award to its LEAs to conduct asbestos detection projects.

(b) However, the Secretary may restrict the amount of the grant to the SEA to ensure that the Federal share of any LEA asbestos detection project in the State does not exceed the Federal share as specified in 34 CFR 230.30.

(20 U.S.C. 3604(a)(2))

§ 231.31 In what circumstances may the Secretary award a grant greater than 50 percent?

The Secretary may increase the amount of a grant if the Secretary determines that an eligible SEA has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award.

(20 U.S.C. 3604(a)(2))

§ 231.32 What criteria does the Secretary apply if appropriations do not meet the 50 percent level of assistance?

If appropriations under the Act do not meet the level of assistance described in § 231.30, the Secretary may determine which applicant SEAs have the greatest financial need for assistance under the SEA Asbestos Detection Program by—

(a) Considering in each of those States the percentage of LEAs that have requested State funds for detecting asbestos hazards; and

(b) Considering—according to one or more of the factors in each of paragraphs (b) (1) and (2) of 34 CFR 230.34—the needs of the LEAs that those SEAs have funded or are funding.

(20 U.S.C. 3611(c))

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 231.50 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR Part 75, an SEA that receives a grant under the SEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds that LEAs have received from the State to conduct asbestos detection projects; and

(b) A description of—

(1) The asbestos detection projects conducted by LEAs with financial assistance from the State;

(2) The results of those asbestos detection projects, including any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The plans of the assisted LEAs for correcting any imminent asbestos hazards that those LEAs detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

§ 231.70 What must a State plan contain?

An SEA, as described in § 231.1(b)(1), shall submit to the Secretary not later than December 15, 1980, a plan that—

(a) Describes the manner in which the State shall distribute to its LEAs the information required in § 231.71;

(b) (1) Describes the content of the information required in § 231.71(a) and any additional information the State considers desirable to distribute to its LEAs; and

(2) Provides an assurance that the State will continually revise, as necessary, the information described in § 231.71 and distribute the revised information to its LEAs;

(c) Describes the procedures the State will use for maintaining records as required in § 231.72; and

(d) (1) Designates a State agency or other State administrative unit responsible for submitting to the Secretary the reports required under § 231.73; and

(2) Provides an assurance that the designated agency or unit will carry out the duties required under § 231.73.

(20 U.S.C. 3603(a))

§ 231.71 What information must a State distribute to its LEAs?

(a) Not later than March 15, 1981, a State shall distribute to its LEAs information describing—

(1) The asbestos detection and control programs under this Act;

(2) The procedures and standards for conducting asbestos detection projects;

(3) The procedures and standards for conducting asbestos control projects; and

(4) The health hazards associated with exposure to asbestos fibers.

(b) A State that distributes to each of its LEAs a copy of these regulations, including all appendices, is considered by the Secretary to be in compliance with paragraphs (a)(1)-(3) of this section.

(20 U.S.C. 3603(a)(1))

§ 231.72 What records must a State maintain?

(a) A State shall maintain records on every LEA within its jurisdiction concerning the following:

(1) The asbestos detection activities conducted by the LEA.

(2) The presence, if any, of friable building materials containing asbestos in each school building of the LEA.

(3) The asbestos control activities conducted by the LEA. These include any activities related to the—

(i) Containment of asbestos materials;

(ii) Removal of asbestos materials;

(iii) Replacement of asbestos materials with other appropriate building materials;

(iv) The repairs made by the LEA to restore school buildings to conditions comparable to those that existed before the LEA conducted any of the activities listed in paragraphs (a)(3)(i) and (ii) of this section.

(b) A State is considered by the Secretary to be in compliance with paragraphs (a) (1) and (2) of this section if that State maintains a copy of a form filled out by each of its LEAs in compliance with any EPA procedures that require an LEA to record the information in paragraphs (a) (1) and (2) of this section.

(20 U.S.C 3603(a)(3))

§ 231.73 What reports must a State submit?

(a) The State agency or other administrative unit designated by the State in its State plan (see § 231.70(d)(1)) shall submit to the Secretary reports describing the actions taken by the State in accordance with its plan.

(b) (1) The designated agency or unit shall submit its first report no later than six months after the State submits its State plan.

(2) The designated agency or unit shall submit its subsequent reports every six months after submitting its first report.

(3) The designated agency or unit shall submit its final report no later than June 15, 1982.

(20 U.S.C. 3603(b))

NOTE: Information in the preceding part—34 CFR Part 230—has a direct bearing on this Part 231. Readers are encouraged to read the preceding part for that information.

APPENDIX A—PROCEDURES FOR CONDUCTING ASBESTOS DETECTION PROJECTS

NOTE: These procedures originally appeared as 40 CFR 763.3 through 763.5 in proposed EPA regulations published in 45 FR 61987 (September 17, 1980). The Department of Education has made minor stylistic changes in the original procedures.

I. Inspection of School Buildings

LEAs shall visually inspect each school building under their authority to locate all friable materials. This inspection shall include surfaces behind suspended ceilings or other non-permanent structures that may be entered during normal building maintenance or repairs. For further information on inspection procedures, officials should consult Chapter 4, "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1 (EPA No. C00090), which is incorporated by reference. Copies of the document can be obtained by calling 800-424-9065 (in Washington, D.C., call 554-1404). The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

II. Sampling Friable Materials

If friable materials are found in a school building, an LEA shall:

(a) Identify each distinct sampling area of friable materials within the school building.

(b) Take at least three samples from locations distributed throughout the sampling area. Sampling locations should not be selected for convenience (ease of reaching the sample) or because the sampler judges the location to be representative. Samples shall be taken using small sealable containers. Samples shall penetrate the depth of the friable material to the substrate.

(c) Label each sample container with a sample identification number unique to the sampling location and building. Officials should consult "Asbestos-Containing Materials in School Building: A Guidance Document," Part 1, Chapter 5, for further information on sampling procedures. The requirement that at least three samples be taken in each sampling area supersedes the recommendation made in the Guidance Document to take one sample per 5,000 square feet of friable material.

"Sampling area" means, within a school building, any area, whether contiguous or not, that contains friable material that is homogeneous in texture and appearance.

III. Analyzing Friable Materials

LEA's shall have all samples of friable material analyzed for asbestos—using Polarized Light Microscopy (PLM), supplemented, if necessary, by X-ray Diffraction—in accordance with "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples," which is incorporated by reference.

Persons interested in analyzing bulk samples for asbestos can obtain copies of the document by calling 800-424-9065 (in Washington, D.C., call 554-1404) The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

A list of laboratories capable of conducting analyses of friable materials can be obtained by calling 800-334-8571, extension 6741. Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 6, for further information on analysis of friable materials.

APPENDIX B—GUIDANCE SYSTEM FOR ASSESSING POTENTIAL ASBESTOS PROBLEMS IN SCHOOLS

I. Introduction

Asbestos fibers may be released within schools from friable materials containing asbestos, leading to exposure of building occupants. A variety of factors may influence the potential for release of fibers. By considering these factors, a school official can determine which friable materials containing asbestos pose the greatest potential to release fibers and, therefore, which materials may require corrective action.

To assist school officials in evaluating health risks, the Education Department and the Task Force has prepared a guidance system for assessing exposure. It must be emphasized that this guidance system does not quantify health risks. It does assist in assessing the potential for contamination. The most important use of this system is to rank several buildings or areas within buildings in order of priority for corrective action.

This guidance system is designed to assist officials to determine not only whether a building has a problem, but, also, which sections of the building have a higher potential for the release of fibers. The system can also be used a number of times within one room, such as a large auditorium, where the content of the material might be the same but the condition of the material changes.

The four factors used in the guidance system are—

(a) Condition of the material;

(b) Proportion of the material exposed;

(c) Friability (very soft to quite hard); and

(d) Total asbestos content.

The guidance system is a numerical combination of these four factors.

The guidance system should be used on friable materials that contain more than 5 percent asbestos. Materials with less than 5 percent asbestos are generally less friable and, therefore, less easily damaged than materials with larger amounts of fiber. A material with less than 5 percent asbestos can usually be assigned a low priority, and may not need corrective action, keeping in mind that the material must be maintained in good condition.

The guidance system presented here is a revision of an earlier draft that has been used by the Environmental Protection Agency (EPA) for the past year. It incorporates a number of changes recommended by persons with extensive experience in using this method.

In order to use this assessment method effectively, evaluators—whether they be school officials or State or local health personnel—should be trained. There is a degree of subjectivity in applying the factors used in the system. To ensure that these factors are uniformly applied, evaluators should visit schools with a range of conditions to become familiar with the various types of materials that may be encountered. Because of extensive evaluating experience, EPA Regional Asbestos Coordinators are able to assist evaluators in the use of the guidance system.

II. Using the Guidance System

Using the guidance system is a two step process: assigning a factor value to each of the four factors (Step A); and then calculating the guidance number (Step B).

Step A. Assigning Values to Each Factor

In each area with friable material containing asbestos, the evaluator must choose the factor score that corresponds to the description best fitting the area. An evaluated area could be an entire building having constant values for each factor, separate rooms, or even sections of one room. For example, an auditorium with a sloping floor might have a section of the ceiling that is accessible and shows marks caused by vandalism, while other sections, beyond reach, remain unmarked. After the evaluator applies the guidance system *specifically to that section of the damaged ceiling,* the evaluator might find that it might be the *only* portion of the ceiling requiring direct corrective action.

Note that for condition of the material, the evaluator assigns only the values 0, 2, or 5; for friability, only 1, 2, or 3. For exposed surface, the evaluator assigns a value between 0 and 4 (it may be a decimal) that is proportional to the percent of the surface exposed. For asbestos content, the evaluator converts the reported mean asbestos concentration to a value between 1 and 3.

Factor One—Condition of Material

This factor is a measure of damage or disruption. Poor condition may be a result of a number of events. These include: Everyday use, vandalism, maintenance, building vibration, water damage, or deterioration of the material itself. This damage or deterioration may appear as material delaminating or separating from the substrate, water spots, gouged out areas, missing pieces of material, or indented areas. The condition shall be scored as follows:

Virtually No Damage or Deterioration: Score 0

The material is intact and shows no signs of deterioration. The material is adhering to the substrate. Essentially there are no missing pieces and no significant water spotting.

Moderate Damage or Deterioration: Score 2

The material is breaking up into layers or beginning to come loose from the substrate. There may be small areas (less than 10% of the total area) where the material is deteriorating. There are signs of accidental or intentional damage that cover no more than 10% of the area.

Extensive Damage or Deterioration: Score 5

Pieces are dislodged, and debris may be evident. Parts of the material may be hanging from the ceiling or may have fallen to the floor. Damage extends over more than 10% of the surface.

NOTE: If friable material containing asbestos is water damaged, correct the condition that caused the water damage (e.g. roof leak) before proceeding with any corrective action.

Factor Two: Proportion of the Material Exposed

The material is exposed if it can be seen by occupants of the area. The material is not exposed if it lies behind a false or suspended ceiling or other barrier that is intact. The exposed surface shall be evaluated as follows:

Estimate the percent of the surface of the friable material containing asbestos that is exposed. Multiply by 4 to convert to the factor score.

(Examples: 25% exposed—Therefore, $0.25 \times 4 = 1.0$; 60% exposed—Therefore, $0.60 \times 4 = 2.40$)

Proportion of the Material Exposed: Score 0-4

Factor Three: Friability

The term friable is applied to material that can be crumbled, pulverized, or reduced to powder by hand pressure. The evaluator must touch the material in order to score friability.

Material containing asbestos can vary in degree of friability. Sprayed asbestos material is generally more friable than trowelled material.

MATERIAL EVALUATED AS NOT FRIABLE NEED NOT BE FURTHER CONSIDERED.

NOTE: It is possible to have friable materials with little or no asbestos content. Cellulose, fibrous glass, and other fibers can produce a material that is friable.

Friability shall be evaluated as follows:

Not Friable: Score 0

Low Friability: Score 1

The material can be damaged by hand but with difficulty.

Moderate Friability: Score 2

It is fairly easy to mark, damage, or dislodge the material by hand or to crush or pulverize it by hand. The material can be removed in small or large pieces.

High Friability: Score 3

The material is fluffy in appearance and is soft or spongy to the touch. It may be flaking. It is easy to penetrate the material with the fingers. Almost any brushing or touching of the material causes a visible breaking away or dusting.

Factor Four: Total Asbestos Content

The percentages for all types of asbestos present in a given sample shall be added to determine the total asbestos content.

The asbestos content must be determined by bulk sample analysis. Building records or assumptions are not reliable or acceptable. Only materials with greater than 5 percent asbestos should be evaluated using the guidance system. This cut-off is due to the difficulty of analysis below 5 percent and the uncertainty of establishing percentage of content.

Generally, materials containing less than 5 percent asbestos need not be considered further; however, unusual circumstances, such as extensive damage, may require special consideration.

Asbestos content is scored on a scale of 1 to 3. Convert the mean concentration of asbestos to a score in this range by multiplying the concentration by 2 and adding the result to 1.

(Example: A material has average content of 10% chrysotile-asbestos and 15% amosite-asbestos. The total concentration of asbestos is, therefore, 25%. Convert to a decimal for use in the formula—0.25)

Score = 1 + (0.25 x 2) = 1 + (0.50) = 1.50.

The asbestos content score is 1.50.

Step B. Calculating the Guidance Number

Once scores have been assigned to the individual factors, the evaluator must calculate the guidance number. The number is simply the sum of the first two factors (condition of material and proportion of the material exposed) multiplied by the product of the next two factors (friability and total asbestos content).

Enter the factor numbers in the following table and compute the guidance number—

1. Condition of material:
   No damage, 0
   Moderate damage, 2
   Severe damage, 5, ————
2. Proportion of the material exposed:
   Scale, 0-4 + ————
   Sum (No. 1 + No. 2) = (Sum)————
3. Friability (not friable = 0):
   Low, 1
   Moderate, 2
   High, 3, ————
4. Total asbestos content:
   Scale, 1-3 × ————
   Product (No. 3 × No. 4) = (Product)————
   Guidance No. = Sum (No. 1 + No. 2) × Product of (No. 3 × No. 4) (Guidance No.)————

Example

An 8th grade classroom has been evaluated and found to have the following:

1. Condition of Material: Some of the ceiling material is hanging, and the custodian reports frequently finding clumps of the ceiling material on the floor. Also, the damage covers 25% of the ceiling's surface—Score: 5.

2. Proportion of the Material Exposed: The ceiling material is totally visible and there is no hung ceiling. (100% exposed; 1.0 × 4 = 4)—Score: 4.

3. Friability: The material is fairly easy to dislodge and can be crushed by hand—Score: 2.

4. Total Asbestos Content: The analysis of the sample indicates 10-15% chrysotile-asbestos, and 80-85% fibrous glass. (Average the reported asbestos content if a range is given. In this case use 12.5%)

Calculation: 1 + (0.125 × 2) = 1.25--Score = 1.25
Guidance No. is: (5 + 4) × (2 × 1.25) = 22.5

Step C. Interpreting the Guidance No.

The four approaches for dealing with asbestos are—

(1) A management system that monitors the condition of the material (but does not require direct corrective action unless the condition of the material changes);

(2) Enclosure with a containment system to isolate the material behind a solid barrier;

(3) Encapsulation with sealant; and

(4) Removal.

After applying the guidance system, the evaluator shall determine whether a management system or direct corrective action is appropriate. In many cases, the use of a management system to monitor an asbestos condition, prevent material disturbance, and control any necessary disturbance is adequate. In other cases, only some type of direct corrective action is appropriate.

The guidance system does not determine the type of action required. The choice of removal, encapsulation, or enclosure will be determined by a number of other factors as listed in Section III. Removal, encapsulation, and enclosure have advantages and disadvantages that must be considered in each case.

The guidance number can provide guidance for the decision maker. The guidance number is to be used as an indicator for the appropriate approach. The final determination should take into consideration such specific conditions of the building and room as those listed in Section III.

NOTE: At present there are no specific guidance numbers that establish criteria to assist school administrators in deciding whether a management program or corrective action program needs to be implemented once asbestos is found. Several members of the Asbestos Hazards School Safety Task Force are conducting a comprehensive analysis of data in order to develop these guidance numbers. When the Task Force completes its analysis, the Secretary will distribute guidance numbers to the appropriate organizations and educational agencies.

The appropriateness of a management program should be reevaluated if the use of the area changes in such a way that damage may increase; e.g., because a more active population uses the space. Also, officials should periodically reconsider the effectiveness of a management program if the condition of the material changes.

III. Other Factors To Be Considered When Deciding Which Approach Is Most Appropriate

A school official will encounter conditions and considerations not explicitly included in the rating system that will influence the action decision. The approach selected will depend on factors not specified in the guidance system. The following is a non-exhaustive list of these considerations and how they may affect the decision:

A. *Number of persons using the area.* This affects likelihood of damage and overall risk because of exposure to the person involved.

B. *Planned renovations and frequency of maintenance and repair.* If renovations are planned or the asbestos is in an area frequently subject to repair work, it may be best to remove the material.

C. *Complexity of surface.* It is difficult to remove friable materials containing asbestos from very complex surfaces. Encapsulation or enclosure may be preferred.

D. *Remaining life of building.* If the building is soon to be demolished or abandoned, good management of the material may be preferred in the interim.

E. *Accessibility.* A highly accessible material should not be encapsulated. A material that is inaccessible (e.g., a very high ceiling)—even though it is totally exposed and has a high asbestos content—might be a candidate for a management approach, rather than direct corrective action, if the material were in good, undamaged condition.

F. *Change in use, activity, and movement.* Increased or changed activity may lead to damage. For example, placing 7th and 8th graders in what had been a kindergarten-through-6th-grade school might make previously inaccessible surfaces vulnerable to damage.

G. *Need to maintain fire rating.* If the friable material containing asbestos is needed to meet fire codes, it cannot be removed without being replaced. Similarly, if it is to be encapsulated, check the fire-retardant characteristics of the sealant.

H. *Need to maintain acoustics.* A material that has acoustic properties may have to be replaced if removed. It may not be appropriate to encapsulate the material since most sealants eliminate the acoustical quality of the material on which they are sprayed.

Some of these factors do not directly affect exposure (e.g., fire rating). However, they will affect the decision to correct a material by limiting the scope of available actions, increasing the cost, etc.

APPENDIX C—PROCEDURES FOR CONTAINING AND REMOVING BUILDING MATERIALS CONTAINING ASBESTOS

These procedures have been developed by the Environmental Protection Agency and represent the best information currently available on controlling the release of fibers from friable materials containing asbestos. The purpose of the procedures is to reduce to the maximum extent possible the risk of contamination of areas of a building adjacent to the area in which asbestos containment or removal activities are being conducted and to provide maximum protection for workers involved in those activities and other users of the building.

I. Introduction

(a) (1) The three methods for containing or removing material containing asbestos are: (i) Encapsulation, in which the material is coated with a bonding agent called a sealant to prevent the release of fibers.

(ii) Enclosure, in which the material is separated from the building environment by impermeable barriers.

(iii) Removal.

(2) Each of these methods can be used separately or in combination with one or both of the others.

(b) In order for encapsulation, enclosure, or removal to reduce imminent hazards to the health and safety of school children and school employees, the work must be performed carefully. Poorly performed work not only creates a risk for persons performing this work, but is likely to increase the risk to students, school employees, and other persons using the building. To insure that the building environment and the outside air are not contaminated and that workers are protected from exposure to asbestos, all procedures for encapsulation, enclosure, or removal must—

(1) Conform to the procedures contained in Section II (of this appendix), General Work Practices;

(2) Conform to the specific work practices contained in the appropriate section of this appendix for the specific control method used. Section III contains work practices for encapsulation. Section IV contains work practices for enclosure. Section V contains work practices for removal;

(3) Comply with OSHA asbestos regulations, 29 CFR 1910.1001; and

(4) Comply with EPA regulations, 40 CFR Part 61, Subpart B, National Emission Standards for Hazardous Air Pollutants (NESHAPS): Asbestos

(c) Persons who perform encapsulation, enclosure, or removal must become familiar with these requirements before taking any action. The OSHA and NESHAPS regulations can be found in "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, which is available by calling 800-424-9065 (in Washington, D.C. 554-1404).

II. General Work Practices

All procedures for containment and removal of asbestos must comply with the following:

(a) *Medical services.* The party responsible for the encapsulation, enclosure, or removal (referred to in these appendices as "the contractor") shall provide medical services to employees as required by OSHA regulations, 29 CFR 1910.1001(j).

(b) *Worker Instruction.* The contractor and its employees shall be instructed, prior to the beginning of the encapsulation, enclosure, or removal, in—

(1) The health hazards of asbestos;

(2) The use of respirators and protective clothing;

(3) Work practices and safety procedures;

(4) Control of the release of asbestos fibers; and

(5) Proper prepation and decontamination of a worksite.

(c) *Materials.* The contractor shall obtain the following materials, which are necessary for any procedure related to the encapsulation, enclosure, or removal of asbestos:

NOTE: The following list does not include ordinary construction materials such as lumber and hardware. It also does not include materials that are necessary for one procedure but not the others. These are discussed in the individual sections on encapsulation, enclosure, and removal.

(1) Respirators (see paragraph (d)).

(2) Replacement cartridges for respirators.

(3) Disposable clothing for workers, including headgear and footwear.

(4) Shoes for use in the work area. Workers may not wear the same pair of shoes in the work area as they do in the clean areas of the building.

(5) Duct tape.

(6) Polyethylene sheets (6 mil., and 2 or 4 mil.).

(7) Warning signs. (See OSHA regulations, 29 CFR 1910.1001(g).)

(d) *Respirators.* The contractor shall select the proper type of respirator in accordance with OSHA regulations 29 CFR 1910.1001(d). The contractor shall be able to demonstrate that the type of respirator used by its employees is appropriate for the level of fibers found or expected in the work area, as required by § 1910.1001(d)(2).

(e) *Decontamination area.* (1) Before beginning the encapsulation, enclosure, or removal, the contractor shall construct a decontamination area to prevent release of fibers to the exterior environment and to protect workers and others from fiber inhalation. This decontamination area must consist of three rooms: (i) A clean room where workers enter and leave the job area.

(ii) A shower for decontamination of workers before they leave the job area.

(iii) A room for removal and storage of contaminated items. This room is referred to in this appendix as the "contaminated room."

(2) If it is possible to use existing rooms in close proximity to the worksite, it may be necessary to construct temporary tunnels, from lumber and plastic, to connect these rooms to the work area. If it is not possible to use existing rooms in close proximity to the worksite, it may be necessary to construct a temporary clean room, shower, and contaminated room, from lumber and plastic, near the work area. Although some innovation is likely to be necessary, the arrangement for the decontamination area must include the following features:

(i) There must be one clearly designated route from the clean room through the contaminated room into the work area, and back out. The shower may be used as a segment of the passageway between the clean room and the contaminated room. The doorway between the contaminated room and the work area is the only doorway through which anyone may be allowed to enter the work area; there may not be any other entrance. If there is a doorway directly from the clean room to the contaminated room, it must be used for traffic in that direction only. No one may be allowed to go from the contaminated room to the clean area without first passing through, and using, the shower.

(ii) (A) The contractor shall construct airlocks in any passages between the clean room and the contaminated room. Each airlock must consist of two sets of two plastic sheets: one set at one end of the airlock and the other at the other end, at least two meters away. Each of the sheets must extend from floor to ceiling and be constructed of 2 or 4 mil plastic. The plastic sheets must be hung close together, with one sheet taped along the top of the doorway and down one side and the other taped along the top and down the other side.

(B) The shower should also function as an airlock with a set of two sheets at each entrance. If the shower is the only passage between the clean room and the contaminated room, no other airlocks are necessary.

(iii) The clean room must contain a space where workers can place their street clothes and a space for the storage of clean work clothes, respirators, respirator cartridges, soap, and towels.

(iv) If there are no usable permanent shower facilities, the contractor shall construct a temporary shower. The shower must have a ceiling. The shower must have a container for the disposal of used respirator cartridges. Water from the shower must be pumped to an existing drain in the building or collected for disposal.

(v) The contaminated room must have an area for workers to remove contaminated clothing and shoes and to store contaiminated personal items (such as workshoes and gloves) and contaminated tools and equipment. It must also have containers for disposal of contaminated clothing as contaminated waste (see paragraph (k)).

(vi) Toilets, permanent or portable, must be available in the work area or contaminated room.

(f) *Work area preparation.* Before beginning the encapsulation, enclosure, or removal, the contractor and its employees shall use the following procedures to prevent the release of asbestos fibers from the work area:

(1) Clean all movable items—such as furniture and equipment—with damp cloths and store them in a clean area outside of the work area. Clean all im-

movable items with damp cloths, wrap the immovable items completely in plastic, and secure the plastic with duct tape. Dispose of the cleaning cloths as contaminated waste (see paragraph (k)).

(2) Bring in any large pieces of equipment, such as scaffolds and airless sprayers, that will not fit easily through the airlocks.

(3) Isolate the work area completely from the rest of the building by constructing barriers across all doorways or corridors except those in the decontamination area that are to be used by the workers. Construct the barriers so as to prohibit passage through them. Use 6 mil plastic, and tape the seams securely.

(4) Turn off all heating, ventilation, and air conditioning systems. Seal all heating registers, vents, and air ducts with plastic sheeting and duct tape. Lock windows and seal them with plastic tape. Remove all curtains, blinds, and other window coverings.

(5) Cover the floors with at least one layer of 6 mil plastic sheets. Bring the floor coverings up the walls and attach them with duct tape to the wall coverings approximately two feet above the floor. cover the walls with 2 or 4 mil plastic sheets so that the sheets overlap the floor sheets, and secure them in place with tape.

(6) Turn off all electrical circuits and lock the electrical panels or boxes. If necessary, install temporary lighting.

(7) Post warning signs outside all entrances to contaminated areas of the building as specified in OSHA regulations, 29 CFR 1910.1001(g).

(8) (i) Arrange for air monitoring and inspections as required by OSHA regulations, 29 CFR 1910.1001(f) (air monitoring services should be provided by a reputable laboratory under direct contract to the building owner). At a minimum, have a single environmental sample collected outside the building at the beginning of the project.

(ii) Each day during the encapsulation, enclosure, or removal procedure, collect at least two air samples within the work area and two air samples immediately outside the work area.

(9) Take down light fixtures in the work area. Clean them with damp cloths and remove them from the work area, or—if debris on the fixtures cannot be removed—discard the fixtures as contaminated waste (see paragraph (k)).

(10) If it is necessary to remove a suspended ceiling to reach the materials containing asbestos, carefully take down the ceiling. Clean the ceiling tiles with damp cloths and store them outside the work area, or—if debris on the tiles cannot be removed—dispose of the tiles as contaminated waste (see paragraph (k)).

(g) *Measures for worker protection.* Each worker, and any other person who enters the jobsite (e.g., an industrial hygienist, an inspector, etc.) shall follow these procedures: (1) In the clean room before entering the work area, remove all street clothing, underwear, and shoes. Put on respirator, then dress in disposable coveralls and headgear (note that it is necessary to put on the respirator before the disposable headgear). Pass through the airlocks into the contaminated room. Then proceed to the work area.

(2) Never remove respirator while in the work area. No one may eat, drink, smoke, or chew tobacco or gum while in the work area.

(h) *Procedures for worker decontamination.* At the end of each work shift and before breaks, workers and any other persons in the work area shall follow these procedures when leaving the work area:

(1) Before entering the contaminated room, remove all gross contamination from disposable clothing.

(2) In the contaminated room, remove all clothing and work shoes, leaving on only the respirator.

(3) Proceed to the shower and wet hair, body, and respirator before removing respirator. Complete shower, washing thoroughly with soap and water.

(4) Remove and discard respirator cartridges in the container provided in the shower. Proceed to the clean room. Clean respirator with a disinfectant, dry it, insert new cartridges, and place respirator in a dry, clean plastic bag.

(5) Put on street clothes and shoes or a new set of disposable clothing.

(i) *Corrective action.* Refer to Sections III, IV, and V of this appendix for directions on the specific control procedures being used.

(j) *Procedures for cleaning the work area.*

NOTE: The contractor and its employees shall follow personal protection procedures (see paragraphs (g) and (h)) while conducting steps (1) through (7) of this paragraph (j).

(1) Dispose of all scrap and debris from the work area, the contaminated room, and the clean room. Treat this debris as contaminated waste (see paragraph (k)).

(2) Remove all floor and wall coverings except heating and ventilation duct covers, barriers, and airlocks. Dispose of the plastic and other materials as contaminated waste.

(3) Wet-clean—with a damp mop, sponge, or cloth—all floors, walls, and other surfaces—including any furniture and equipment in the work area or contaminated room. Wait 24 hours to allow airborne fibers to settle; during this period allow no ventilation or traffic in the area.

(4) Wet-clean all surfaces again, and again wait 24 hours.

(5) Wet-clean all surfaces once more (EPA recommends that this final cleaning be supplemented by the use of a High Efficiency Particulate Absolute (HEPA) vacuum cleaner).

(6) Visually inspect the entire area to make sure it is clean. If dry wiping of surfaces reveals dust contamination, do further wet-cleaning. The monitoring of air may be required by the State or locality or specified in the contract.

(7) When the entire area is clean, dismantle all airlocks, barriers, and temporary shower facilities. Remove coverings from heating and ventilation ducts. Inspect all ducts, especially the horizontal sections, for debris containing asbestos, and vacuum with a HEPA vacuum or wet-clean the ducts, as necessary. Replace all heating, ventilation, and air conditioning filters, and dispose of old filters as contaminated waste. Dispose of all plastic and lumber as contaminated waste. Remove from the work area all cleaned equipment belonging to the contractor.

(8) Return to the work area furniture and other movable items stored during the encapsulation, enclosure, or removal. Restore electrical and other systems to operation, and return the building to normal use.

(k) *Disposal of contaminated waste.* The contractor and its employees shall follow the procedures in paragraphs (k) (1) through (4) when disposing of asbestos-contaminated waste—including asbestos-containing materials removed from the building structure, lumber and plastic used in barriers and airlocks, debris remaining on the floor, cleaning cloths, and any other contaminated materials.

(1) Place the waste in impermeable containers (EPA recommends that the waste be placed in 6 mil. polyethylene bags and that the bags be placed in sealable fiber drums). The waste containers must be sealed and labeled with warning signs as required by OSHA regulations, 29 CFR 1910.1001(g)(2).

(2) Handle containers carefully so that they do not break. The containers must be taken to the entrance of the work area, cleaned with a damp cloth, and placed in the airlock.

(3) A decontaminated worker shall take the waste containers from the airlock to a loading area for transportation to a disposal site.

(4) EPA recommends that all workers involved in disposal activities wear respirators.

(5) Dispose of the waste in compliance with EPA regulations, 40 CFR 61.22 and 61.25.

(6) Contractors using bags and drums shall observe the following procedures:

(i) If a bag is intact, it may be removed from the drum before disposal, and the drum may be recycled.

(ii) If a drum has been contaminated by leakage from a broken bag inside it, it must be buried with the bags.

III. Work Practices for Removal

These procedures are for wet removal of building materials containing asbestos. Wet removal is the most common removal method. Removal operations using other techniques are also acceptable if the contractor can demonstrate that those techniques are in compliance with EPA and OSHA regulations.

After completing construction of the decontamination area and preparation of the work area, the contractor and its employees shall follow these procedures in removing and disposing of materials containing asbestos:

(a) *The removal process.* (1) Thoroughly saturate with water the material containing asbestos. EPA recommends the use of water that has been amended with a surfactant, or wetting agent, to increase its penetration and reduce the volume of water required. This surfactant is usually 50 percent polyoxyethylene ether and 50 percent polyoxyethylene ester or the equivalent (such as a low-sudsing soap). It is mixed with water at a rate of one ounce of surfactant to five gallons of water.

(2) Spray the amended water onto the material in a fine mist, using either an airless spray gun set at low pressure or some other low-pressure applicator such as a hand-held pesticide applicator.

(3) To make sure the material is thoroughly saturated, it may be necessary to spray it several times or to spray it once the night before removal is planned and again immediately before removal.

(4) Remove material containing asbestos, using broad-bladed putty knives or any other suitable tools. If any dry areas are exposed during the course of removal, stop scraping immediately and spray the dry material with water. To remove the last of the material containing asbestos, use a wire brush, wet rag, or sponge.

(5) Usually the material containing asbestos is allowed to drop to the ground. If the workers are standing on the ground, they can immediately place the removed material directly into sealable, impermeable containers. If scaffolding is used, the wet material containing asbestos can be collected in sealable, impermeable containers mounted on the scaffolding. One convenient method involves constructing chutes that lead directly into containers that are also attached to the scaffolding near the floor.

(6) No matter what collection technique is used, the wet material must be placed in sealable, impermeable containers before it dries.

(7) If the material is to remain on the floor for any length of time, it must be periodically resprayed with water to keep it moist.

(8) EPA recommends that 6 mil. plastic bags be used as containers for asbestos waste and that the bags be placed in fiber drums for transportation to the disposal site.

(9) OSHA requires that the filled containers be sealed and warning labels attached. (See 29 CFR 1910.1001(g)(2).)

(b) *The disposal process.* (1) The contractor shall dispose of containers of asbestos-contaminated waste in accordance with the provisions of paragraph (k) of Section II of this appendix.

IV. Work Practices for Encapsulation

(A) A contractor that encapsulates material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall use sealants that have been awarded fireproofing ratings of Class "A."

(b) (1) In order to minimize the release of fibers, sealants should be applied with an airless spray gun set at the minimum pressure at which the sealant can be applied.

(2) Sealants that cannot be applied by airless spray shall be applied at the lowest possible pressure to reduce fiber release.

(c) The contractor shall consult with the sealant's manufacturer to learn the recommended coverage rate, number of coats, time allowed between coats, and dilution of sealant, if any.

V. Work Practices For Enclosure

(a) A contractor that encloses material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall insure that—

(1) The material to be enclosed is not exposed to an air plenum system; and

(2) The barriers constructed to enclose the material are airtight and impermeable.

(b) Installation of an enclosure barrier usually necessitates either penetrating or touching the material containing asbestos. Because this operation is usually performed dry, higher fiber levels than those created during removal operations are usually present and may require more stringent respiratory protection for workers. These requirements are described in OSHA regulations, 29 CFR 1910.1001.

PART 240—TEACHER CENTERS

Subpart A—General

Sec.
240.1 What is the purpose of the Teacher Centers Program?
240.2 Who is eligible to receive grants?
240.3 Who is eligible to be served by a teacher center?
240.4 What regulations apply to this program?
240.5 What definitions apply to this program?

Subpart B—What Kinds of Projects Are Assisted Under This Program?

240.10 What types of projects are assisted?
240.11 What area is served by a teacher center?
240.12 What activities may a teacher center perform?
240.13 How is the teacher center policy board formed?
240.14 How are the funds distributed among applicants?
240.15 What costs are allowable?

Subpart C—How Does One Apply for a Grant?

240.20 Where and to whom must an applicant submit its application?
240.21 What is the role of SEAs in reviewing applications?
240.22 What are the procedures for appealing the SEA's recommendation?
240.23 What information must be included in an application?

Subpart D—How Does the Secretary Make a Grant?

240.30 How does the Secretary evaluate an application?
240.31 What are the evaluation criteria?
240.32 Is at least one teacher center supported in each State?

Sec.
240.33 For what services are SEAs compensated?
240.34 What amount of compensation do SEAs receive?

AUTHORITY: Section 532 of Title V-B, of the Higher Education Act of 1965, as enacted by Section 153 of the Education Amendments of 1976 (Pub. L. 94-482), and amended by Section 1321 of the Education Amendments of 1978 (Pub. L. 95-561) and by Section 503-504 of the Education Amendments of 1980 (Pub. L. 96-374).

SOURCE: 46 FR 9873, Jan. 29, 1981, unless otherwise noted.

Subpart A—General

§ 240.1 What is the purpose of the Teacher Centers Program?

The purpose of the Teacher Centers Program is to meet the professional needs of teachers as defined by teacher center policy boards, thus enabling teachers to meet their students' educational needs better by—

(a) Providing financial assistance to local educational agencies (LEAs) and educational service agencies for planning, establishing, and operating teacher centers; and

(b) Providing financial assistance to institutions of higher education (IHEs) for operating teacher centers.

(Section 532; 20 U.S.C. 1119a)

§ 240.2 Who is eligible to receive grants?

The following agencies and institutions are eligible to apply for and receive grants:

(a) Local educational agencies (LEAs).

(b) Educational service agencies.

(c) Institutions of higher education (IHEs)

(d) A combination of either or any of the above agencies and/or institutions.

(Section 532; 20 U.S.C. 1119a)

§ 240.3 Who is eligible to be served by a teacher center?

In addition to teachers as defined in § 240.5 of this part, the persons to be served by a teacher center may be determined by the teacher center policy board to include paraprofessionals, teacher aides, preschool teachers, teachers of adults below the college level, counselors, principals, other administrators, supervisors, curriculum specialists, librarians, media specialists, elementary and secondary school students, the parents of elementary and secondary school students, substitute teachers, part-time teachers, teachers who are unemployed or former teachers employed in other capacities who intend to return to teaching, and intern teachers assigned to teach in a school where the teachers are being served by a teacher center assisted under the Act.

(Section 532(a); 20 U.S.C. 1119a(a))

§ 240.4 What regulations apply to this program?

The following regulations apply to the Teacher Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this part.

(20 U.S.C. 1221e-3(a)(1))

§ 240.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms in this part are defined in 34 CFR Part 77.

Applicant
Application
Department
EDGAR
Grant
Grantee
Local educational agency (LEA)
Nonpublic school
Project
Project period
Public
Secretary
State
State educational agency (SEA)

(20 U.S.C. 1232)

(b) The following terms apply specifically to this part:

"Act" means Section 532 of the Higher Education Act of 1965 as enacted by Pub. L. 94-482 and amended by Pub. L. 95-561 and Pub. L. 96-374.

(Section 532; 20 U.S.C. 1119a)

"Educational service agency" means an intermediate school district, county school district or board of cooperative education services, officially recognized by a State, which performs administrative or service functions for local educational agencies (LEAs), including but not limited to handicapped education programs, inservice and preservice training, computer services and curriculum development.

(Section 532; 20 U.S.C. 1119a)

"Institution of higher education" means an educational institution as defined in Section 1201(a) of the Higher Education Act of 1965, as amended.

(Section 1201(a); 20 U.S.C. 1141(a))

"Site" means the location or locations where the curriculum development and training activities of the teacher center take place.

"Supervision" means the setting of policy and any appropriate managerial or supervisory activities not prohibited by State or local law (e.g., the employment of operating staff, consultants or experts, budgeting and expenditure of funds, and the formulation of recommendations for subcontracting to secure technical and other kinds of assistance).

(Section 532(b); 20 U.S.C. 1119a(b))

"Teacher" means only a regular full-time classroom teacher engaged in teaching elementary or secondary school students, including a teacher of special education, vocational education, or bilingual education.

(Section 532(b); 20 U.S.C. 1119a(b))

"Testing" means the knowledge and procedures needed for complete understanding of the theory, production and use of any means, informal or formal, for measuring the achievement of students or other effects upon students resulting from school attendance.

(Section 532(a)(2)(B); 20 U.S.C. 1119(a)(2))

Subpart B—What Kinds of Projects Are Assisted Under This Program?

§ 240.10 What types of projects are assisted?

The Secretary makes grants, to plan, establish, or operate teacher centers.

(Section 532(f); 20 U.S.C. 1119a(f))

§ 240.11 What area is served by a teacher center?

A teacher center serves teachers employed in both public and nonpublic schools (if nonpublic schools are located in the area to be served and choose to participate in the teacher center) of—

(a) A portion of a single school district;

(b) An entire school district; or

(c) Any number of school districts in a State.

(Section 532; 20 U.S.C. 1119a)

§ 240.12 What activities may a teacher center perform?

The teachers served by a teacher center are afforded the opportunity, where desirable in collaboration with one or more IHEs that serve teachers, to—

(a) Develop and produce curricula (including the modification or adaptation of existing curricula and the use of technology and telecommunications) designed to meet the educational needs of the students served by the teachers;

(b) Use educational research findings or new or improved methods, practices, and techniques in the development of the curricula;

(c) Provide training designed to—

(1) Enable the teachers to meet better the special educational needs of the students they serve (including training to enable teachers to implement specific curricula effectively); and

(2) Familiarize the teachers with developments in curriculum and educational research, including testing and the use of research to improve teaching skills.

(Section 532(a)(2); 20 U.S.C. 1119a(a)(2))

§ 240.13 How is the teacher center policy board formed?

(a) *Composition.* Each teacher center must be operated under the supervision of a teacher center policy board composed as follows:

(1) The majority of the members of the policy board shall be representative of all the teachers in the area to be served by the center, including—

(i) Teachers who provide special education for handicapped and exceptional children;

(ii) Teachers of vocational education; and

(iii) Where appropriate, teachers of bilingual education.

(2) The policy board must include two or more persons representative of, or designated by, the school board(s) of the LEA (or LEAs) served by the center.

(3) The policy board must also include at least one representative designated by the institution (or institutions) of higher education (with departments or schools of education) in the area to be served by the center.

(4) If the area to be served includes more than one LEA or more than one IHE with a department or school of education, each agency or institution must be represented on the teacher center policy board under paragraphs (a) (2) or (3) of this section. A person designated to the teacher center policy board under paragraph (a)(3) of this section may represent more than one IHE.

(b) *Representativeness.* (1) Each grantee must assure that the majority of the board is representative of teachers by—

(i) Making the categories of teachers (e.g, vocational education teachers, special education teachers, where appropriate bilingual education teachers, and other teachers at both elementary and secondary levels) fairly reflect the categories of teachers in the area to be served, including equitable representation of nonpublic school teachers (if there are nonpublic schools in the area to be served which choose to participate in the teacher center); and

(ii) Selecting the teacher members composing the majority of the board by one of the following options:

(A) Agreement between the LEA and the teachers' collective bargaining agent—

(*1*) As to the specific teacher representatives; or

(*2*) As to the procedures for selecting the teacher representatives.

(B) Appointment of the teacher representatives by the teachers' collective bargaining agent.

(C) Appointment of the teacher representatives by the teachers' organization with the largest number of members.

(D) Voting in which all teachers in the area to be served by the center have an opportunity to participate, either through a general or school-by-school election.

(E) Another method which permits teachers generally, either directly or through their teachers' organization, to nominate or select the teacher representatives on the board.

(F) A combination of two or more of the options in paragraphs (b)(1)(ii) (A) through (E) of this section.

(2) The options described in paragraph (b)(1)(ii) of this section apply both to teacher centers serving teachers within a single LEA and to teacher centers serving teachers in more than one LEA.

(3) In case of a teacher center serving an entire State, in addition to the options under paragraph (b)(1)(ii) of this section, the teacher members composing the majority of the board can be appointed by one or more State-level teachers' organizations.

§ 240.14 How are the funds distributed among applicants?

(a) The Secretary sets aside 10 pecent of the amount appropriated under the Teacher Centers Program to fund applications from IHEs to plan, establish, or operate teacher centers: *Provided*, that there are sufficient applications from IHEs that receive the 50 point minimum to be considered for funding under the evaluation criteria in § 240.31.

(b) After setting aside funds for grants to IHEs under paragraph (a) of this section and funds for compensating SEAs for their activities under § 240.34, the Secretary uses the remaining funds for grants to LEAs and educational service agencies.

(c) In the case of a joint grant to a combination of one or more IHEs and one or more LEAs or educational service agencies, the amount of the grant charged to the 10 percent set-aside for IHEs is determined—

(1) According to the amount budgeted in the approved application for IHEs; or

(2) If separate amounts for applicants are not budgeted in the application, according to the ratio of IHEs to all recipients of the grant.

(Section 532; 20 U.S.C. 1119a)

§ 240.15 What costs are allowable?

In addition to the costs specified as allowable in EDGAR, the following costs are allowable under the Teacher Centers Program:

(a) Release time or payment for substitutes to enable teachers to participate in activities of the teacher center.

(b) Expense of the teacher center policy board, including payment of released time or substitutes to enable its teacher members to participate in activities of the board, but not including the expenses of preparing an application for a grant under the Teacher Centers Program.

(Section 532(a)(2) and (e); 20 U.S.C. 1119a(a)(2) and (e))

Subpart C—How Does One Apply for a Grant?

§ 240.20 Where and to whom must an applicant submit its application?

Each applicant for a grant under the Teacher Centers Program must submit an application to the Secretary through the SEA of the State in which the applicant is located.

(Section 532; 20 U.S.C. 1119a)

§ 240.21 What is the role of SEA's in reviewing applications?

The Secretary will not approve an application unless—

(a) The SEA of the State in which the applicant is located has reviewed the application, made comments thereon, recommended that the application be approved, and transmitted the application to the Secretary for approval; and

(b) The appropriate SEA has given an assurance that it will provide technical assistance to each center, and will adequately disseminate information derived from the center, including information on how the SEA will carry out the technical assistance and dissemination and a projected budget for those activities.

CROSS-REFERENCE: See EDGAR 34 CFR 75.150—75.154 State approval procedures.

(Section 532(d); 20 U.S.C. 1119a(d))

§ 240.22 What are the procedures for appealing the SEA's recommendation?

(a) Any LEA educational service agency, or IHE that is dissatisfied with the recommendation of the SEA regarding its application may petition the Secretary to request further consideration of the application by the SEA.

(b) In the event of such an appeal, the Secretary requests further consideration by the SEA.

(c) After the SEA receives a request for further consideration from the Secretary, the SEA shall transmit the application to the Secretary along with the SEA's comments and evaluation.

(Section 532(c)(2) and (f); 20 U.S.C. 1119a(c)(2) and (f))

§ 240.23 What information must be included in an application?

(a) Each application must include—

(1) Designation of the specific area, school district(s), and schools, both public and nonpublic, to be served by the center;

(2) Documentation that a teacher center policy board—

(i) Has been established, including information on the membership of the board and the method of its selection, and

(ii) Has participated fully in the preparation of the application and has approved it as submitted;

(3) A statement of the means for assuring equitable participation by nonpublic school teachers on the teacher center policy board and in receiving the center's services, or documentation that there is no nonpublic school in the area to be served, or that nonpublic schools in the area to be served have chosen not to participate;

(4) A one-page abstract of the proposed project; and

(5) A plan of operation which must include a statement of the special educational needs of the students to be served by teachers participating in the center, and an explanation of how those needs were determined.

(b) With respect to an application to operate an existing teacher center, the application, in addition to meeting the requirements in paragraph (a) of this section, must contain the following:

(1) A description of the activities of the center during the preceding year and the cost thereof;

(2) Identification of the sources of funding of the center during the preceding year; and

(3) A statement of the kinds of activities that will be undertaken to improve the existing center by use of the Federal assistance requested.

(c) An IHE shall include in its application, in addition to other applicable information required by paragraphs (a) and (b) of this section, evidence that arrangements have been made with those LEAs with teachers to be served by the project for the participation of the teachers in center activities and in the activities of the teacher center policy board.

(Section 532(f); 20 U.S.C. 1119a(f))

Subpart D—How Does the Secretary Make a Grant?

§ 240.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 240.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses at the beginning of that criterion.

(d) An application must receive a minimum of 50 points to be considered for funding.

§ 240.31 What are the evaluation criteria?

In evaluating an application the Secretary considers:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons;

(D) The elderly; and

(vi) For grants made after October 1, 1980, a clear description of how the applicant will provide for participation of teachers employed at nonprofit private schools that choose to participate in the teacher center.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel who will be used on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section will be required to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications for a position, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Authority of policy board.* (10 points)

The Secretary reviews each application for information that shows the extent of the teacher center policy board's authority and responsibility for supervision of the project.

(g) *Potential for increasing teacher effectiveness.* (20 points)

The Secretary reviews each application for information that shows the potential of the proposed teacher center for increasing the effectiveness of the teachers served, in terms of the learning needs of their students.

(h) *Adequacy of dissemination.* (3 points)

The Secretary reviews each application for information that shows the adequacy of provisions for dissemination of the results of the project.

(i) *Size, scope, and duration.* (5 points)

The Secretary reviews each application for information that shows the appropriateness of size, scope, and duration of the project so as to secure productive results.

(j) *Potential impact on inservice training.* (15 points)

The Secretary reviews each application for information that shows the potential of the teacher center to impact upon and improve the grantee's overall program of inservice training for teachers.

(k) *Representativeness of policy board.* (10 points)

The Secretary reviews each application for information that shows the representativeness of the teacher center policy board required under § 240.13.

(l) *Support of new or expanded activities.* (5 points)

The Secretary reviews each application for information that shows the extent to which Federal funds will support new or expanded activities rather than supporting activities which are already being paid for from other resources.

(Section 532; 20 U.S.C. 1119a)

§ 240.32 Is at least one teacher center supported in each State?

In selecting projects for funding, the Secretary ensures that, in each fiscal year for which funds are appropriated under the Teacher Centers Program, at least one teacher center in each State receives funds under the program if at least one applicant in that State submits an approvable application. If necessary to meet this requirement, the Secretary may waive the 50 point minimum in § 240.31.

(Section 531; 20 U.S.C. 1119)

§ 240.33 For what services are SEAs compensated?

The Secretary compensates SEAs for the cost of the following services performed in connection with the Teacher Centers Program:

(a) Reviewing and commenting on applications.

(b) Submitting applications to the Secretary after approval.

(c) Providing technical assistance to funded centers. Allowable technical assistance expenses of the SEA may include—

(1) Consulting services rendered at the teacher center site;

(2) Workshops and conferences to provide information to centers (including an exchange of information among teacher centers); and

(3) Activities of the SEA to obtain information incidental and necessary to the provision of technical assistance to funded centers in its State.

(d) Disseminating information resulting from activities of funded centers.

(Section 532 (c) and (d); 20 U.S.C. 1119a (c) and (d))

§ 240.34 What amount of compensation do SEAs receive?

The Secretary sets aside one-tenth of the amount appropriated for the Teacher Centers Program for the compensation of SEAs, to be disbursed according to the following stipulations:

(a) Compensation for the combined services noted in paragraphs (a) and (b) of § 240.33 is at a rate per application set by the Secretary not to exceed prevailing rates for similar services.

(b) The remainder of the sum reserved for SEAs is made available to carry out functions described in paragraphs (c) and (d) of § 240.33.

(c) An SEA is compensated for the technical assistance it provides to, and the dissemination of information from, each funded teacher center in an amount for each center no more than that which bears the same ratio to the total funds available for these functions as the amount of the grant award to the center bears to the total funds awarded to teacher centers in the fiscal year.

(Section 532(d); 20 U.S.C. 1119a(d))

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

Sec.

250.1 Applicability.
250.2 Eligibility.
250.3 Other applicable regulations.
250.4 Definitions.

Sec.
250.5 Applicability of Section 7(b) of the Indian Self-Determination and Education Assistance Act.
250.6 Applications.
250.7 Allocation of available funds.
250.8 Capacity to carry out a project.
250.9 Salaries and wages.
250.10 Organizational and administrative documents.
250.11 Continuation awards.

AUTHORITY: Title IV of Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241aa-241ff, 1211a, 1221h, 3385, 3385a), unless otherwise noted.

SOURCE: 45 FR 34153, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

§ 250.1 Applicability.

The regulations in this part apply to all programs conducted under the Indian Education Act, except the Indian Fellowship Program (see 34 CFR Part 263). The regulations for these programs are contained in the following parts.

251—Entitlement Grants—Local Educational Agencies and Tribal Schools
252—Indian-Controlled Schools—Establishment
253—Indian-Controlled Schools—Enrichment Projects
254—Demonstration Projects—Local Educational Agencies
255—Educational Services for Indian Children
256—Planning, Pilot, and Demonstration Projects for Indian Children
257—Educational Personnel Development
258—Educational Services for Indian Adults
259—Planning, Pilot, and Demonstration Projects for Indian Adults
260—Adult Education Research and Development Projects
261—Adult Education Surveys
262—Adult Education Dissemination and Evaluation Projects

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.2 Eligibility.

Eligibility for each of the programs is described in the section on eligibility under the appropriate part.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.3 Other applicable regulations.

(a) The programs under 34 CFR Parts 251 through 262 are subject to the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions), except for—

(1) Sections 75.107(a), 75.111 (d) and (e), and 75.115 (insofar as it incorporates § 75.590(c)), relating to the contents of an application;

(2) Section 75.125(a), relating to applications under separate programs;

(3) Sections 75.202 through 75.206, relating to selection criteria;

(4) Section 75.590(c), relating to a grantee's project evaluation; and

(5) Section 75.650, relating to the participation of children enrolled in private schools.

(b) Sections 75.230 through 75.233, relating to procedures to make a grant, do not apply to the program of entitlement grants to LEAs and tribal schools, for which regulations are contained in 34 CFR Part 251.

(c) *How to use regulations.* The "Introduction to Regulations of the Department" at the beginning of the EDGAR includes general information to assist applicants in using regulations that apply to Department of Education programs.

(d) *How to apply for funds.* General instructions for applying for assistance under a Department program are contained in 34 CFR Part 75.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.4 Definitions.

(a) Except as otherwise provided by statute or regulation, the following terms, used in this part and in 34 CFR Parts 251 through 262 are defined in 34 CFR Part 77:

Applicant.
Application.
Award.
Budget period.
Elementary school.
Facilities.
Fiscal year.
Grant period.
Local educational agency.
Minor remodeling.
Project.
Project period.
Public.
Secondary school.
State.
State educational agency.

(b) The following definitions apply to the terms in this part and in 34

CFR Parts 251 through 262, unless otherwise provided:

"Adult" means any individual who has attained the age of sixteen.

"Adult education" means services or instruction below the college level for adults who—

(1) Lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

(2) Are not currently required to be enrolled in schools.

"Ancillary educational personnel" means guidance counselors, librarians, and others who assist in meeting the educational needs of Indian students. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

"Child" means any child who is within the age limits for which the applicable State provides free public education.

"Demonstration project" or "planning, pilot, and demonstration project" means a project that—

(1) Develops, tests, and demonstrates the effectiveness of an educational method, approach, or technique; and

(2) If successful, will be suitable for adaptation by other projects.

"Department" means the U.S. Department of Education.

"Equipment" means—

(1) Machinery, utilities, and built-in equipment;

(2) Any enclosures or structures necessary to house the items listed in paragraph (1) of this definition; and

(3) All other items necessary for the functioning of a facility for the provision of educational services, including items such as—

(i) Instructional equipment and necessary furniture;

(ii) Printed, published, and audiovisual instructional materials; and

(iii) Books, periodicals, documents, and other related materials.

"Free public education" means education that is both—

(1) Provided at public expense, under public supervision and direction, without tuition charge; and

(2) Provided as elementary or secondary school education in the applicable State.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies.

"Handicapped" person means a mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired person or a person with specific learning disabilities, who, because of his or her handicap requires special educational and related services.

"Indian" means any individual who is—

(1) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

"Indian institution" means a preschool, elementary, secondary, or postsecondary school that—

(1) Is established for the education of Indians;

(2) Is controlled by a governing board, the majority of which is Indian; and

(3) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation.

"Indian organization" means an organization that—

(1) Is legally established by tribal or inter-tribal charter or in accordance with State or tribal law, with appropriate constitution, by-laws, and articles of incorporation;

(2) Has the primary purposes of promoting the educational, economic, or social self-sufficiency of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

"Indian tribe" means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" means an educational institution in any State that—

(1) Admits as a regular student only an individual having a high school graduation certificate or the recognized equivalent of a high school graduation certificate;

(2) Is legally authorized within that State to provide a program of education beyond high school;

(3) Provides—

(i) An educational program for which it awards a bachelor's degree;

(ii) An educational program of not less than two years that is acceptable for full credit toward a bachelor's degree; or

(iii) A two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields that require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) (i) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary, or, if not accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions that are accredited, on the same basis as if transferred from an institution that is accredited.

(ii) However, in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields that requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit that type of institution, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by that type of institution.

The advisory committee shall prescribe the standards of content, scope, and quality that must be met in order to qualify that type of institution to participate under the appropriate program and shall also determine whether particular institutions meet those standards.

(iii) For the purpose of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

"Local educational agency" (LEA), as used in 34 CFR Parts 258 through 262 (adult education programs under Part C of the Indian Education Act), means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools; or

(2) If there is a separate board or other legally constituted local authority having administrative control and

direction of adult education in public schools in the area referred to in paragraph (1), that other board or authority.

"Organized group of Indians" means an ethnically and culturally identifiable group of Indians, indigenous to the territory of what is now the United States, and which has been in substantially continuous existence throughout the history of the United States.

"Parent". (1) The term "parent" includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent).

Examples of individuals who may stand *in loco parentis* with respect to a child are—

(i) A foster parent of the child; and

(ii) A grandparent with whom the child resides.

(2) In determining whether an individual stands *in loco parentis* with respect to a child, an LEA may consider such factors as—

(i) The current relationship of the child to the natural parent(s);

(ii) The length and stability of the relationship between the individual and the child;

(iii) Tribal custom and tribal law;

(iv) Applicable State law, whether legislative or judicial; and

(v) Dependency for purposes of State or Federal income tax law.

"Secondary school," as used in 34 CFR Parts 255 through 257 (programs under Part B of the Indian Education Act), means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"Secretary" means the Secretary of Education.

"Service area" means the geographic area served by a project.

"State," as used in 34 CFR Parts 251 through 254 (programs under Part A of the Indian Education Act), means any of the 50 States, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, or the Virgin Islands.

"Stipend" means the allowance for personal living expenses paid to a participant in a personnel development project.

"Teacher aide" means a person who assists a teacher in the performance of the teacher's teaching or administrative duties. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

(20 U.S.C. 241aa-241ff, 244, 1202, 1211a, 1221h(a), 3381, 3385, 3385a)

§ 250.5 Applicability of Section 7(b) of the Indian Self-Determination and Education Assistance Act.

(a) Awards under Parts 251 through 262 that are primarily for the benefit of Indians, as defined in paragraph (b) of this section, are subject to Section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act. That section requires that, to the greatest extent feasible, a grantee—

(1) Give preferences and opportunities for training and employment in connection with the administration of the grant to Indians; and

(2) Give preference in the award of contracts in connection with the administration of the grant to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974, 25 U.S.C. 1452(e).

(Pub. L. 93-638, Section 7(b); 25 U.S.C. 450e(b))

(b) For the purposes of this section, an "Indian" is a member of an Indian tribe. An "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 93-638, Section 4 (a), (b); 25 U.S.C. 450b (a), (b))

§ 250.6 Applications.

(a) An applicant shall specify in its application the particular program under 34 CFR Parts 251 through 262 under which it is applying.

(b) If an applicant submits an application for a program under 34 CFR Parts 251 through 262 for which the proposed project is not authorized, the Secretary may, with the consent of the applicant, review the application under an appropriate program, if any under Parts 251 through 262, for which it may be timely considered.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.7 Allocation of available funds.

(a) Each year, the Secretary, in accordance with the provisions of 34 CFR Parts 75.100 through 75.102, publishes an application notice that states the amount of funds available for new projects under each of the programs governed by 34 CFR Parts 251 through 262.

(b) When making awards for new projects, the Secretary allocates funds to each program on the basis of the statement of available funds in the application notice. However, the Secretary may reduce the allocation of funds for a program (other than the entitlement grants program described in Part 250a) and reallocate the excess funds to other programs authorized by the appropriate part of the Indian Education Act, if the Secretary determines, on the basis of the appropriate selection criteria, that the amount of funds necessary for approvable activities described in meritorious applications is less than the entire initial allocation for that program.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.8 Capacity to carry out a project.

In addition to the criteria for rating applications under the discretionary programs in 34 CFR Parts 252 through 262, the Secretary, in making awards under those programs, considers an applicant's capacity to carry out successfully the project for which it seeks assistance, including such factors as—

(a) The programmatic and financial management capacity of the applicant;

(b) Past performance by the applicant in carrying out any prior grant under the Indian Education Act or under similar programs, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices, attainment of objectives, and the assumption of responsibility by the applicant's governing board; and

(c) The adequacy of facilities and other resources to be used for the project, including consideration of any dispute over the availability of those facilities and resources to the applicant.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.9 Salaries and wages.

A grantee shall pay individuals hired for a project assisted under 34 CFR Parts 251 through 262 salaries and wages that are at least comparable to the salaries and wages paid in the local area to those with similar jobs.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.10 Organizational and administrative documents.

(a) A grantee shall have on file, and submit to the Secretary on request—

(1) Articles of incorporation, if incorporated;

(2) A constitution, charter or similar document, if not incorporated;

(3) By-laws;

(4) Personnel policies and procedures;

(5) Travel policies;

(6) Organizational charts and administrative manuals; and

(7) Job descriptions.

(b) An LEA that is a grantee under 34 CFR Parts 251 through 254 shall have on file, and submit to the Secretary on request, the names and addresses of the members of the LEA's parent committee, and the by-laws adopted by the parent committee.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

§ 250.11 Continuation awards.

(a) The Secretary may fund projects under 34 CFR Parts 251 through 262 for up to three years, except that the Secretary may fund projects under the Educational Personnel Development programs described in 34 CFR Part 257 for up to four years.

(b) Additional regulations governing continuation awards are in 34 CFR 75.251 and 75.253.

(20 U.S.C. 241aa-241ff, 1211a, 3385, 3385a)

PART 251—ENTITLEMENT GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

Subpart A—General

Sec.
251.1 What is the purpose of this program?
251.2 Who is eligible to apply?
251.3 Applicability of this part to local educational agencies and tribal schools.
251.4 Other applicable regulations.
251.5 Maintenance of effort.
251.6 Prohibition on supplanting other funds.

Subpart B—What Activities Are Authorized?

251.10 Authorized activities.

Subpart C—How to Develop a Project and Apply for a Grant

251.20 Selecting the parent committee.
251.21 Conducting a needs assessment.
251.22 Designing a project.
251.23 Developing an evaluation plan.
251.24 Holding a public hearing.
251.25 Application contents.
251.26 Continuation awards.

Subpart D—How Grants Are Made

251.30 Approval of applications by the Secretary.
251.31 Amount of grant.

Subpart E—Operating a Project

251.40 Responsibilities of the local educational agency.
251.41 Responsibilities of the parent committee.
251.42 Limitations on hiring project staff.

AUTHORITY: Title IV, Part A, of Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241aa-241ff), unless otherwise noted.

SOURCE: 45 FR 34156, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 251.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act to develop and carry out elementary and secondary school projects that meet the special educational and culturally related academic needs of Indian children.

(Pub. L. 81-874, Section 302(a); 20 U.S.C. 241aa(a); and Pub. L. 95-561, Section 1146; 20 U.S.C. 241bb-1)

§ 251.2 Who is eligible to apply?

(a) *Local educational agencies.* (1) A local educational agency (LEA) is entitled to receive a grant if the number of Indian children enrolled in that agency's schools is either—

(i) 10 or more; or

(ii) At least half the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment requirements of paragraph (a)(1) of this section if it is located—

(i) In Alaska, California, or Oklahoma; or

(ii) On, or in proximity to, an Indian reservation.

(Pub. L. 81-874, Section 303(a); 20 U.S.C. 241bb(a))

(b) *Tribal schools.* An Indian tribe, or an organization that is controlled or sanctioned by an Indian tribal government, that operates a school for the children of that tribe, is eligible to receive a grant on behalf of that school if the school either—

(1) Provides its students an educational program that meets the standards established by the Bureau of Indian Affairs under Section 1121 of the Education Amendments of 1978 (25 U.S.C. 2001), which requires the establishment of standards for the basic education of Indian children in Bureau of Indian Affairs schools; or

(2) Is operated by that tribe or organization under a contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638.

(Pub. L. 95-561, Section 1146; 20 U.S.C. 241bb-1)

§ 251.3 Applicability of this part to local educational agencies and tribal schools.

(a) *Applicable to LEAs.* All the provisions of this Part 251, except those applicable by their terms only to tribal schools, apply to applicants or grantees that are LEAs.

(b) *Applicable to tribal schools.* The following provisions of this Part 251 apply to applicants or grantees applying for or receiving assistance to support tribal schools, except to the extent that they refer to a parent committee.

(1) Section 251.6, relating to the supplanting of other funds.

(2) Section 251.10, relating to authorized activities.

(3) Sections 251.21 through 251.24, relating to the development of a project.

(4) Section 251.25(b), relating to the contents of an application.

(5) Section 251.26, relating to continuation awards.

(6) Sections 251.30 and 251.31, relating to the award of grants.

(7) Section 251.40(n), relating to student eligibility forms.

§ 251.4 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to this program.

(b) Grantees under this program are subject to the provisions of 34 CFR 74.102 through 74.105(b), relating to programmatic changes and budget revisions.

(Pub. L. 81-874, Sections 302-307; 20 U.S.C. 241aa-241ff)

§ 251.5 Maintenance of effort.

(a) The Secretary does not make payments to an LEA for any fiscal year unless the appropriate State educational agency (SEA) finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than the combined fiscal effort for that purpose for the second preceding fiscal year.

(b) (1) For the purpose of making the finding described in paragraph (a) of this section, an SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2) "Aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under any Federal program of assistance.

(3) "Per pupil expenditure" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(Pub. L. 81-874, Section 306(b)(2); 20 U.S.C. 241ee(b)(2))

§ 251.6 Prohibition on supplanting other funds.

A grantee shall use funds received under this program to supplement, and, to the extent practical, increase the level of State, local, or other Federal funds that would, in the absence of grant funds, be made available by the recipient for the education of Indian children. In addition, a grantee should, to the extent feasible, coordinate the use of funds received under this program with those State, local, or other Federal funds. A grantee may not, however, use grant funds to supplant those State, local, or other Federal funds.

(Pub. L. 81-874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

Subpart B—What Activities Are Authorized?

§ 251.10 Authorized activities.

(a) A grantee may use grant funds for the establishment, maintenance, and operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children. Permissible services and activities include, but are not limited, to—

(1) Remedial instruction in basic skill subject areas;

(2) Instruction in tribal heritage and in Indian history and political organi-

zation. This includes current affairs and tribal relationships with local, State, and Federal governments;

(3) Accelerated instruction and other activities that provide additional educational opportunities;

(4) Home-school liaison services;

(5) Creative arts such as traditional Indian art, crafts, music, and dance;

(6) Native language arts, including bilingual projects and the teaching and preservation of Indian languages; and

(7) (i) Where the conditions in paragraph (a)(7)(ii) of this section are met, the following items that parents cannot afford:

(A) School-related items, such as academic expenses and expenses for participation in extracurricular activities sponsored by the school.

(B) In cases of extreme hardship, food, clothing, and medical and dental care.

(ii) The items described in paragraph (a)(7)(i) of this section may be provided only if—

(A) The parent committee and the LEA establish eligibility criteria based on financial need for receipt of those items;

(B) These items are provided only to children whose parents meet those eligibility criteria; and

(C) These items are not available from any other source.

(b) A grantee may also use grant funds—

(1) To plan for and take other steps leading to the development of projects like those described in paragraph (a) of this section and to carry out pilot projects designed to test the effectiveness of those plans.

(c) The Secretary encourages all grantees to use culturally-based materials and techniques in project activities.

(Pub. L. 81-874, Section 304; 20 U.S.C. 241cc)

Subpart C—How to Develop a Project and Apply for a Grant

§ 251.20 Selecting the parent committee.

(a) Before developing a project, an applicant shall arrange and publicize the procedures for the selection of a parent committee or the selection of members to open positions on the committee, as appropriate.

(b) Those eligible to serve on the committee are—

(1) Parents of Indian children enrolled in the applicant's schools;

(2) Teachers, including certified guidance counselors, in the applicant's schools, except that members of the project staff may not serve on the committee; and

(3) Indian secondary school students, if any, enrolled in the applicant's schools.

(c) At least half the committee members shall be Indian.

(d) At least half the committee members shall be parents. In addition, the committee shall have at least one teacher, and, if any Indian secondary school students are enrolled in the applicant's schools, at least one of those students.

(e) The committee members shall be elected by those listed in paragraph (b) of this section, unless the Secretary, in deference to tribal custom, determines that a method of selection other than election, such as sanction by a tribal government, is appropriate in a particular situation. In such a case, the Secretary may, on written request of the applicant, and before the selection of the committee, allow the use of that other method. In making this determination, the Secretary consults with appropriate tribal representatives.

(f) Any member of the committee may serve as any officer of the committee.

(g) Membership terms may be multiyear and may be staggered. For example, membership terms may be for three years, with one third of the committee selected each year.

(h) An individual may continue to be a member of the committee only so long as that individual meets the qualifications in paragraph (b) of this section.

(i) Section 251.42 (*Limitations on hiring project staff*) prohibits the applicant from hiring for a position on the project staff any member of the parent committee or any member of the immediate family of a parent committee member, unless the Secretary grants a waiver.

(Pub. L. 81-874, Section 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

§ 251.21 Conducting a needs assessment.

(a) An applicant shall conduct a needs assessment to determine the special educational and culturally related academic needs of the Indian children enrolled in its schools and the number of children with those needs.

(b) In making this determination, the applicant shall—

(1) Consider dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(2) Rank those needs on a priority basis; and

(3) Examine other services that it offers that could meet those needs, determine how many Indian children receive those services, and determine why those other services are insufficient in either quantity or quality, or both, to meet those needs. This shall include an examination of whether those services are culturally relevant to Indian children.

(Pub. L. 81-874, Section 305(b)(2)(A); 20 U.S.C. 241dd(b)(2)(A))

§ 251.22 Designing a project.

(a) After the needs assessment is completed, an applicant shall determine which needs will be addressed and shall design a project to meet those needs.

(b) In designing the project, the applicant shall seek to include activities, services, and materials that support and build upon the values, heritage, and traditions of the Indian community.

(c) The project design shall include—

(1) Objectives that are—

(i) Sharply defined;

(ii) Stated in measurable terms; and

(iii) Capable of being achieved within the project period;

(2) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(3) A plan for effective administration of the project;

(4) A plan for regular consultation with and involvement of the parent committee and the Indian community in the operation of the project; and

(5) A plan for coordinating the project with other services and activities.

(Pub. L. 81-874, Section 305(b)(2); 20 U.S.C. 241dd(b)(2))

§ 251.23 Developing an evaluation plan.

(a) The applicant shall also develop, as part of the project design, an evaluation plan that provides for—

(1) Periodic monitoring of the project's progress;

(2) An objective, quantifiable method, including an appropriate measurement of educational achievement, to determine if the project meets each of its objectives;

(3) An evaluation of the administration of the project;

(4) The involvement of the parent committee in monitoring and evaluation activities; and

(5) Consultation with parents of Indian children served by the project and with other members of the Indian community.

(b) The evaluation plan shall include provisions for an evaluator independent of the project to—

(1) Assist in monitoring and evaluation activities; and

(2) Conduct a final evaluation of the project.

(Pub. L. 81-874, Section 305(a)(4); 20 U.S.C. 241dd(a)(4))

§ 251.24 Holding a public hearing.

(a) The applicant shall hold a hearing open to the general public, at which it provides an opportunity for full public discussion of the proposed project.

(b) At the hearing, a representative of the applicant shall—

(1) Describe the various alternatives available under this program;

(2) Describe the proposed project, including the LEA's compliance with the "supplement, not supplant" provisions of § 251.6;

(3) Seek comments and recommendations from those at the hearing; and

(4) Provide a reasonable time for discussion of the proposed project and alternatives to it.

(Pub. L. 81-874, Section 305(b)(2)(B)(i); 20 U.S.C. 241dd(b)(2)(B)(i))

§ 251.25 Application contents.

(a) *Local educational agencies.* After an applicant that is an LEA has held the public hearing described in § 251.24 and given full consideration to comments and recommendations made at the hearing, the applicant prepares an application and submits it to the Secretary. In addition to the information required under applicable provisions of 34 CFR Part 75, the applicant shall include in its application each of the following:

(1) A description of the procedures used to select the parent committee members.

(Pub. L. 81-874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(2) The names, addresses, and telephone numbers of the officers of the parent committee, and the number of parents, teachers, and students on the committee.

(Pub. L. 81-874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(3) A description of the applicant's plan for the continual involvement of the parent committee in the operation and evaluation of the project, including procedures for regular consultation with the committee.

(Pub. L. 81-874, Section 305(b)(2)(C); 20 U.S.C. 241dd(b)(2)(C))

(4) A description of how the needs assessment and ranking process described in § 251.21 was carried out, including a description of the role played by the parent committee.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

(5) On a form provided by the Secretary a description of the special educational and culturally related academic needs of the Indian children enrolled in the applicant's schools, including the number of children who demonstrate those needs, and a list of those needs ranked by priority.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

(6) A detailed description of the project, including a project design that meets the requirements of § 251.22, and a statement of the number of children who will participate in each component of the project.

(Pub. L. 81-874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(7) An assurance that the applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance.

(Pub. L. 81-874, Section 305(a)(1); 20 U.S.C. 241dd(a)(1))

(8) A description of the methods of administration that have been or will be adopted to ensure that the applicant will operate the project properly and efficiently.

(Pub. L. 81-874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(9) A description of the applicant's policies and procedures that ensure that funds made available under Part A of the Indian Education Act will be used to supplement and, to the extent practical, increase the level of funds—including other Federal funds—that would, in the absence of funds under Part A of the Act be made available by the applicant for the education of Indian children, and in no case so as to supplant those other funds.

(Pub. L. 81-874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(10) A statement of how the proposed project will be fiscally and administratively coordinated with other projects to meet the special educational and culturally related academic needs, or both, of Indian children.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

(11) A statement of the applicant's fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds that the applicant may receive under Part A of the Indian Education Act.

(Pub. L. 81-874, Section 305(a)(6); 20 U.S.C. 241dd(a)(6))

(12) A description of the procedures, including an appropriate objective measurement of educational achievement, that the applicant will adopt to monitor and evaluate, at least annual-

ly, the effectiveness of the proposed project in achieving its objectives. These procedures shall include the involvement of the parent committee and consultation with parents of the Indian children served by the project.

(Pub. L. 81-874, Section 305(a)(4); 20 U.S.C. 241dd(a)(4))

(13) An assurance that the applicant will keep records that the Secretary may reasonably require to carry out the Secretary's functions under Part A of the Indian Education Act and will afford the Secretary the access necessary to verify those records.

(Pub. L. 81-874, Section 305(a)(7); 20 U.S.C. 241dd(a)(7))

(14) In the case of an application for planning, evidence that—

(i) The planning will be directly related to projects to be carried out under Part A of the Indian Education Act and is reasonably likely to result in a project that will be carried out under Part A of the Act; and

(ii) The planning funds are needed because of the innovative nature of the project or because the LEA lacks the resources necessary to plan adequately for projects to be carried out under Part A of the Indian Education Act.

(Pub. L. 81-874, Section 305(a)(3); 20 U.S.C. 241dd(a)(3))

(15) Other information that the Secretary may require as part of the application form.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

(b) *Tribal schools.* (1) An applicant applying for assistance to support a tribal school shall comply with paragraphs (a)(4) through (a)(15) of this section, except the provisions of those paragraphs that refer to a parent committee.

(2) If an applicant claims eligibility on the ground that it operates a school under contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act, the applicant shall include in its application detailed budget information from the contract, such as line-item amounts for particular services and activities.

(Pub. L. 95-561, Section 1146; 20 U.S.C. 241bb-1)

§ 251.26 Continuation awards.

(a) *Public hearing.* Before submitting an application for a continuation award, a grantee shall hold a hearing open to the general public. At the hearing, the grantee shall provide an opportunity for full public discussion of all aspects of the project to date and for the remainder of the project period, including discussion of such topics as—

(1) The adequacy of other projects and services provided by the grantee to meet the special educational and culturally related academic needs of Indian children;

(2) How the project has been and will be coordinated with other projects and services to meet the special educational and culturally related academic needs of those children; and

(3) The grantee's compliance with the "supplement, not supplant" provisions of § 251.6.

(b) *Parent committee approval.* Before an LEA may submit an application for a continuation award, the application must have the written approval of the parent committee.

(Pub. L. 81-874, Section 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

Subpart D—How Grants Are Made

§ 251.30 Approval of applications by the Secretary.

(a) The Secretary approves an application for assistance only if—

(1) The application meets all the applicable requirements of the Indian Education Act, of Part 75, of Part 250, and of this part; and

(2) If the project for which the application is submitted will substantially increase the educational opportunities of Indian children served by the applicant.

(b) (1) If an application that was submitted on or before the application deadline date—

(i) Proposes unauthorized activities; or

(ii) Proposes costs that are not reasonable and necessary, the Secretary may provide the applicant an appropriate opportunity to amend its application and may specify a date by which the applicant shall amend its application.

(2) If the applicant has not appropriately amended its application by the date specified by the Secretary, the Secretary may disapprove the application.

(Pub. L. 81-874, Section 305(b); 20 U.S.C. 241dd(b))

§ 251.31 Amount of grant.

(a) The amount of the grant to which an applicant is entitled for any fiscal year is computed on the basis of the formula in Section 303(a) of Pub. L. 81-874. (Title III of that statute is Part A of the Indian Education Act.)

(b) Under the statutory formula, the amount of the grant to which an applicant is entitled is computed by—

(1) Multiplying the number of Indian children enrolled in the schools of the applicant to whom it provides free public education by—

(2) The average per pupil expenditure for all LEAs in the State in which the applicant is located.

(c) In setting the actual amount of a grant, an applicant's entitlement amount is reduced proportionately with that of all other applicants on the basis of available appropriations.

(Pub. L. 81-874, Sections 303(a), 307(a); 20 U.S.C. 241bb(a), 241ff(a))

Subpart E—Operating a Project

§ 251.40 Responsibilities of the local educational agency.

It is the responsibility of the LEA to—

(a) Ensure that a parent committee is selected in accordance with § 251.20.

(b) Consult with and involve the parent committee in all phases of the project;

(c) Perform a needs assessment that meets the requirements of § 251.21;

(d) Design a project that meets the requirements of § 251.22 and an evaluation plan that meets the requirements of § 251.23.

(e) Conduct a public hearing in accordance with § 251.24;

(f) Secure the parent committee's written approval of the project application, applications for continuation awards, and amendments to applications (including revisions to the project budget and project design) before those documents are submitted to the Secretary;

(g) Provide the parent committee with copies of 34 CFR Parts 250 and 251, other applicable regulations, the grant award document, and correspondence to or from the Department of Education relating to the project;

(h) Prepare the parent committee to carry out its responsibilities by, for example, holding workshops on 34 CFR Parts 250 and 251 and on other applicable regulations;

(i) With the advice of the parent committee, develop policies and procedures relating to the hiring of project staff;

(j) Hire the project staff after considering any recommendations of the parent committee;

(k) Use the best available talents and resources, including persons from the Indian community, in carrying out the project;

(l) Monitor and evaluate the project in accordance with an evaluation plan that meets the requirements of § 251.23;

(m) Make available to the parent committee and to the Indian community records, including financial records, relating to the project, except those records that are protected by law from disclosure; and

(n) Ensure that a student certification form is on file for each student included in the count of Indian students on which the amount of an entitlement is based.

(Pub. L. 81-874, Sections 303-305; 20 U.S.C. 241bb-241dd)

§ 251.41 Responsibilities of the parent committee.

It is the responsibility of the parent committee to—

(a) Adopt by-laws. These by-laws shall include, at a minimum, provisions on—

(1) The selection and duties of officers;

(2) Filling vacated terms on the committee;

(3) The conduct of business meetings; and

(4) Amending the by-laws;

(b) Participate in the assessment of needs, and the design, operation, and evaluation of the project;

(c) Review and approve in writing, before they are submitted to the Secretary, the project application, applications for continuation awards, and amendments to applications (including revisions to the project budget and project design);

(d) Advise the LEA on the development of policies and procedures relating to the hiring of project staff;

(e) Review the qualifications of, and make recommendations concerning, applicants for project staff positions; and

(f) Make available to the community copies of its records, such as by-laws, minutes of meetings, and the list of committee members, except those records that are protected by law from disclosure.

(Pub. L. 81-874, Sections 305(b)(2) (B), (C); 20 U.S.C. 241dd(b)(2) (B) (C))

§ 251.42 Limitations on hiring project staff.

(a) (1) The LEA may not hire for a position on the project staff any member of the parent committee.

(2) The LEA may not hire for a position on the project staff any member of the immediate family of a parent committee member.

(b) The Secretary may waive the prohibition in paragraph (a)(2) of this section if—

(1) The applicant is unable to hire another person with adequate qualifications; or

(2) The waiver is necessary to further the purpose of the project.

(c) If the Secretary grants a waiver, the affected parent committee member may not participate in any committee action that affects, or is likely to affect, the financial interests of that individual's immediate family member who is on the project staff.

(d) A member of the parent committee may not participate in a review of applicants for a project staff position or in any other committee actions relating to that position, if that individual or any member of his or her immediate family is an applicant for that position.

(e) As used in this section, the term "immediate family" includes an individual's spouse, children, parents, brothers, sisters, legal dependents, and spouses of those persons.

(Pub. L. 81-874, Section 305(b)(2); 20 U.S.C. 241dd(b)(2))

PART 252—INDIAN-CONTROLLED SCHOOLS—ESTABLISHMENT

Subpart A—General

Sec.

252.1 What is the purpose of this program?
252.2 Who is eligible to apply?
252.3 Other applicable regulations.
252.4 Limitation on assistance.

Subpart B—What Activities Are Authorized?

252.10 Authorized activities.

Subpart C—How to Apply for a Grant

252.20 Application contents.

Subpart D—How Grants Are Made

252.30 How applications are evaluated.
252.31 Selection criterion: Need for the school. (0 to 15 points)
252.32 Selection criterion: Need for financial assistance. (0 to 15 points)
252.33 Selection criterion: Project design. (0 to 15 points)
252.34 Selection criterion: Likelihood of success. (0 to 10 points)
252.35 Selection criterion: Parental and community involvement. (0 to 10 points)
252.36 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
252.37 Selection criterion: Adequacy of resources. (0 to 5 points)
252.38 Selection criterion: Staff. (0 to 10 points)
252.39 Selection criterion: Evaluation plan. (0 to 10 points)
252.40 Selection criterion: Commitment. (0 to 5 points)

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SOURCE: 45 FR 34160, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 252.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act to plan for and establish Indian-controlled schools.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.2 Who is eligible to apply?

An Indian tribe or Indian organization, or an LEA that will have been an LEA for not more than three years as of the beginning of the proposed project period, is eligible for assistance under this program if—

(a) It plans to establish and operate, or is operating, a school for Indian children that is located on or geographically near one or more reservations;

(b) The majority of the students who are or will be enrolled at that school—

(1) Live on that reservation or those reservations; or

(2) Maintain regular economic, cultural, and family ties with that reservation or those reservations; and

(c) The governing body of that school is composed of a majority of Indians and has full authority to establish policies and to operate the school, including responsibility for and control over—

(1) Operational policies;

(2) Personnel decisions;

(3) Academic standards;

(4) Budgets; and

(5) School facilities.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.3 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to all applicants and grantees under this program.

(b) An applicant or grantee that is an Indian tribe or organization is subject to 34 CFR 251.6 (*Supplanting of other funds*).

(c) An applicant or grantee that is an LEA is subject to the following sections of 34 CFR Part 251:

(1) Section 251.5 (*Maintenance of effort*).

(2) Section 251.6 (*Supplanting of other funds*).

(3) Section 251.20 (*Selecting the parent committee*). However, if the LEA has formed, or is forming, a parent committee under § 251.20 for the purposes of applying for an entitlement grant under Part 250, the LEA may choose to have that committee serve as the parent committee for the purposes of this program.

(4) Sections 251.40 and 251.41, relating to the respective responsibilities of the LEA and the parent committee, except § 251.40(n), relating to student eligibility forms.

(5) Section 251.42 (*Limitations on hiring project staff*).

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.4 Limitation on assistance.

The Secretary does not provide assistance under this program to support the establishment or operation of a particluar Indian-controlled school for more than three years.

Example: An applicant receives a three-year grant under this program to assume control of a school for Indian children previously operated by a nonprofit organization. At the end of the three-year project period, the Secretary will not provide further assistance under this program to that applicant or to any other applicant for the support of that school. However, that school will continue to qualify for support under the Enrichment Projects program for Indian-Controlled Schools (see 34 CFR Part 253), if the applicant under that program has not been an LEA for more than three years.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

Subpart B—What Activities are Authorized?

§ 252.10 Authorized activities.

Authorized activities include, but are not limited to, those related to—

(a) Establishing and operating an LEA;

(b) Assuming control over and operating a school previously operated by the Federal Government, the State, an LEA, or a private organization; and

(c) Establishing and operating a school.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

Subpart C—How to Apply for a Grant

§ 252.20 Application contents.

(a) *All applicants.* In addition to the information required under applicable provisions of 34 CFR Part 75, an applicant shall include in its application each of the items listed below:

(1) A detailed description of the project, including a project design that meets the requirements of 34 CFR 251.22, and a statement of the number of children who will participate in the project. However, an applicant that is not an LEA is not required to comply with § 251.22(b)(4), relating to the involvement of a parent committee in designing a project.

(Pub. L. 81-874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(2) An assurance that the applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance.

(Pub. L. 81-874, Section 305(a)(1); 20 U.S.C. 241dd(a)(1))

(3) A description of the applicant's policies and procedures that ensure that funds made available under Part A of the Indian Education Act will be used so as to supplement and, to the extent practical, increase the level of funds (including other Federal funds) that would, in the absence of funds under Part A of the Act be made available by the applicant for the education of Indian children, and in no case so as to supplant those other funds.

(Pub. L. 81-874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(4) A description of the methods of administration that have been or will be adopted to ensure that the applicant will operate the project properly and efficiently.

(Pub. L. 81-874, Section 305(a)(2), 20 U.S.C. 241dd(a)(2))

(5) A statement of how the proposed project will be fiscally and administratively coordinated with other projects to meet the special educational and culturally related academic needs, or both, of Indian children.

(Pub. L. 81-874, Section 305(a), 20 U.S.C. 241dd(a))

(6) A statement of the applicant's fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds that the applicant may receive under Part A of the Indian Education Act.

(Pub. L. 81-874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(7) A description of the procedures, including, if appropriate, an objective measurement of educational achievement, that the applicant will adopt to monitor and evaluate at least annually the effectiveness of the proposed project in achieving its objectives. These procedures shall include consultation with parents of the Indian children served by the project.

(8) An assurance that the applicant will keep records that the Secretary may reasonably require to carry out the Secretary's functions under Part A of the Indian Education Act and will afford the Secretary the access necessary to verify those records.

(Pub. L. 81-874, Section 305(a)(7); 20 U.S.C. 241dd(a)(7))

(9) Documentation from each appropriate Indian tribe, located on a reservation near the school for which assistance is sought, that children who attend the school either live on or maintain regular economic, cultural, and family ties with that reservation.

(10) Other information that the Secretary may require as part of the application form.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

(b) *Local educational agencies.* In addition to the information described in paragraph (a) of this section, an aplicant that is an LEA shall provide the following information in its application:

(1) A description of the procedures used to select the parent committee members.

(Pub. L. 81-874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(2) The names, addresses, and telephone numbers of the officers of the parent committee, and the number of parents, teachers, and students on the committee.

(Pub. L. 81-874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(3) A description of the applicant's plan for the ongoing involvement of the parent committee in the operation and evaluation of the project, including procedures for regular consultation with the committee.

(Pub. L. 81-874, Section 305(b)(2)(C); 20 U.S.C. 241dd(b)(2)(C))

(4) A description of how the needs assessment and ranking process described in 34 CFR 251.21 was carried out, including a description of the role played by the parent committee.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

(5) On a form provided by the Secretary, a description of the special educational and culturally related academic needs of the Indian children enrolled in the applicant's schools, including the number of children who demonstrate those needs, and a list of those needs as ranked by priority.

(Pub. L. 81-874, Section 305(a); 20 U.S.C. 241dd(a))

Subpart D—How Grants Are Made

§ 252.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 252.31 through 252.40. the point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.31 Selection criterion: Need for the school. (0 to 15 points)

(a) The Secretary reviews each application to determine the need for the school that the applicant proposes to operate.

(b) In making this determination, the Secretary considers—

(1) The educational needs of the Indian children to be served by the school, as indicated by academic achievement levels, dropout rates, standardized test scores, or other appropriate measures;

(2) The extent to which the schools that those children would attend (if the proposed Indian-controlled school were not available) are inadequate to meet those needs;

(3) The extent to which the school for which assistance is sought will increase educational opportunities for Indian children; and

(4) Community factors or other reasons that justify the need for an Indian-controlled school.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.32 Selection criterion: Need for financial assistance. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the applicant needs financial assistance under this program to establish an Indian-controlled school.

(b) In making this determination, the Secretary considers evidence that the applicant does not have, and is unable to obtain from other sources, the funds necessary to carry out the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.33 Selection criterion: Project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for the effective administration of the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.34 Selection criterion: Likelihood of success. (0 to 10 points)

(a) The Secretary reviews each application to determine the likelihood that the project will be successful.

(b) In making this determination, the Secretary looks for evidence that, by the end of the project period—

(1) The applicant will be operating the school and will continue to operate the school without further assistance under this program; and

(2) The school will be able to meet standards for accreditation, registration, or similar recognition established by the Bureau of Indian Affairs or the appropriate State educational agency.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.35 Selection criterion: Parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.36 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.37 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.38 Selection criterion: Staff. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of school board members.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.39 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 252.40 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers factors such as—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

PART 253—INDIAN-CONTROLLED SCHOOLS ENRICHMENT PROJECTS

Subpart A—General

Sec.
253.1 What is the purpose of this program?
253.2 Who is eligible to apply?
253.3 Other applicable regulations.

Subpart B—What Activities Are Authorized?

253.10 Authorized activities.

Subpart C—How To Apply for a Grant

253.20 Application contents.

Subpart D—How Grants Are Made

Sec.
253.30 How applications are evaluated.
253.31 Selection criterion: Need. (0 to 20 points)
253.32 Selection criterion: Rationale. (0 to 10 points)
253.33 Selection criterion: Project design. (0 to 15 points)
253.34 Selection criterion: Parental and community involvement. (0 to 10 points)
253.35 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
253.36 Selection criterion: Adequacy of resources. (0 to 10 points)
253.37 Selection criterion: Staff. (0 to 10 points)
253.38 Selection criterion: Evaluation plan. (0 to 15 points)
253.39 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Title IV, Part A, of Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

SOURCE: 45 FR 34163, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 253.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act for enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.2 Who is eligible to apply?

An Indian tribe or Indian organization, or an LEA that will have been an LEA for not more than three years as of the beginning of the proposed project period, is eligible if—

(a) It operates a school for Indian children that is located on or geographically near one or more reservations;

(b) The majority of the students enrolled at that school—

(1) Live on that reservation or those reservations; or

(2) Maintain regular economic, cultural, and family ties with that reservation or those reservations; and

(c) The governing body of that school is composed of a majority of Indians and has full authority to establish policies and to operate the school, including responsibility for and control over—

(1) Operational policies;

(2) Personnel decisions;

(3) Academic standards;

(4) Budgets; and

(5) School facilities.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.3 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to this program.

(b) An applicant or grantee that is an Indian tribe or organization is subject to 34 CFR 251.6 (*Supplanting of other funds*).

(c) An applicant or grantee that is an LEA is subject to the following sections of 34 CFR Part 251:

(1) Section 251.5 (*Maintenance of effort*).

(2) Section 251.6 (*Supplanting of other funds*).

(3) Section 251.20 (*Selecting the parent committee*). However, if the LEA has formed, or is forming, a parent committee under § 251.20 for the purpose of applying for an entitlement grant under Part 251, the LEA may choose to have that committee serve as the parent committee for the purposes of this program.

(4) Sections 251.40 and 251.41, relating to the respective responsibilities of the LEA and the parent committee, except § 251.40(n), relating to student eligibility forms.

(5) Section 251.42 (*Limitations on hiring project staff*).

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

Subpart B—What Activities Are Authorized?

§ 253.10 Authorized activities.

(a) Authorized activities include, but are not limited to, those related to——

(1) Stimulating interest in careers directly related to the manpower needs of the Indian community;

(2) Providing accelerated courses in areas such as mathematics, science, or tribal management;

(3) Introducing a new approach to the teaching of reading;

(4) Stimulating interest in tribal culture and heritage by involving members of the community in instruction;

(5) Preventing alcoholism and drug abuse; and

(6) Providing opportunities for students to become involved in the arts.

(b) The activities listed in paragraph (a) of this section are examples. Projects should be designed to meet identified needs in the service area.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

Subpart C—How To Apply for a Grant

§ 253.20 Application contents.

The information to be included in an application is described in 34 CFR 252.20.

Subpart D—How Grants Are Made

§ 253.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 253.31 through 253.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.31 Selection criterion: Need. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the proposed project.

(b) In making this determination, the Secretary considers—

(1) The clarity of the statement of the educational needs to be addressed by the project;

(2) How widespread those needs are, as indicated by the number and percentage of Indian children with those needs in the area to be served by the project;

(3) The severity of those needs, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(4) A description of the efforts to meet those needs being made by the school and an explanation of why those efforts are insufficient; and

(5) An explanation of why the applicant lacks the financial resources necessary to conduct the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.32 Selection criterion: Rationale. (0 to 10 points)

(a) The Secretary reviews each application to determine the soundness of the rationale for the project.

(b) In making this determination, the Secretary looks for—

(1) A justification of why the applicant has selected the particular needs to be addressed by the project;

(2) A clear description of the educational approach to be used;

(3) A justification of why the applicant has chosen this approach; and

(4) Evidence that the approach is likely to be successful with the children who will participate in the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.33 Selection criterion: Project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.34 Selection criterion: Parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.35 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.36 Selection criterion: Adequacy of resources. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.37 Selection criterion: Staff. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of school board members.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.38 Selection criterion: Evaluation plan. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

§ 253.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers factors such as—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81-874, Section 303(b); 20 U.S.C. 241bb(b))

PART 254—DEMONSTRATION PROJECTS—LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.
254.1 What is the purpose of this program?
254.2 Who is eligible to apply?
254.3 Other applicable regulations.

Subpart B—What Types of Projects Are Authorized?

254.10 Authorized projects.

Subpart C—How To Apply for a Grant

254.20 Application contents.

Subpart D—How Grants Are Made

254.30 How applications are evaluated.
254.31 Selection criterion: Need and rationale. (0 to 20 points)
254.32 Selection criterion: Project design. (0 to 15 points)
254.33 Selection criterion: Parental and community involvement. (0 to 10 points)
254.34 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
254.35 Selection criterion: Adequacy of resources. (0 to 5 points)
254.36 Selection criterion: Staff. (0 to 15 points)
254.37 Selection criterion: Evaluation design. (0 to 20 points)
254.38 Selection criterion: Commitment. (0 to 5 points)
254.39 Reservation of funds for districts with high concentrations of Indian children.
254.40 Annual priorities.

AUTHORITY: Title IV, Part A, of Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241bb(c)), unless otherwise noted.

Source: 45 FR 34165, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 254.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act for demonstration projects designed to improve educational opportunities for Indian children.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.2 Who is eligible to apply?

LEAs are eligible to apply under this program.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.3 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to this program.

(b) In addition, applicants and grantees under this program are subject to the following provisions of 34 CFR Part 251:

(1) Section 251.5 (*Maintenance of effort*).

(2) Sections 251.20 through 251.26, relating to developing a project and applying for a grant.

(3) Section 251.30 (*Approval of applications by the Secretary*).

(4) Sections 251.40 through 251.42, relating to project operation, except § 251.40(n), relating to student eligibility forms.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

Subpart B—What Types of Projects Are Authorized?

§ 254.10 Authorized projects.

(a) Projects that may be supported include, but are not limited to, those that—

(1) Test and validate culturally based tests that measure the academic achievement of Indian children;

(2) Test and validate culturally based methods to meet the academic needs of Indian children;

(3) Test and validate culturally based curriculum materials that enhance the cultural identity and academic performance of Indian children;

(4) Improve basic skills;

(5) Employ culturally relevant techniques to lower the dropout rate among Indian children;

(6) Demonstrate culturally based fine arts activities; or

(7) Demonstrate techniques that promote the active involvement of Indian parents in the education of their children.

(b) The projects listed in paragraph (a) of this section are examples. Projects should be designed to meet identified needs in the LEA's service area.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

Subpart C—How To Apply for a Grant

§ 254.20 Application contents.

The information to be included in an application is described in 34 CFR 251.25(a).

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

Subpart D—How Grants Are Made

§ 254.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 254.31 through 254.38. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.31 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project and the soundness of the project rationale.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the special educational and culturally related academic needs to be addressed;

(2) Evidence that the needs to be addressed are of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for LEAs having similar educational needs.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.32 Selection criterion: Project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.33 Selection criterion: Parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.34 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.35 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.36 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) The extent to which the parent committee has been involved in the selection of staff.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.37 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the children involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.38 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general, and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) The human, physical, and financial resources that the applicant plans to commit to the project; and

(2) Other efforts, both past and present, by the applicant to improve educational opportunities for Indian children.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.39 Reservation of funds for districts with high concentrations of Indian children.

(a) The Secretary may reserve up to 25 percent of the funds appropriated for this program for any fiscal year for the purpose of making grants to LEAs with high concentrations of Indian children. The purpose of those grants is to enable those LEAs to conduct demonstration projects that examine the special educational and culturally related academic needs of Indian children enrolled in their schools.

(b) An LEA with a high concentration of Indian children is one in which—

(1) Indian children constitute at least 50 percent of the total enrollment in all the LEA's schools, or

(2) The number of Indian children enrolled in the LEA's schools is at least 1,000.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

§ 254.40 Annual priorities.

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 254.10(a).

(b) The Secretary publishes the selected priorities, if any, in the FEDERAL REGISTER.

(c) In addition to the points awarded under §§ 254.31 through 254.38, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the selected priorities.

(Pub. L. 81-874, Section 303(c); 20 U.S.C. 241bb(c))

PART 255—EDUCATIONAL SERVICES FOR INDIAN CHILDREN

Subpart A—General

Sec.

255.1 What is the purpose of this program?
255.2 Who is eligible to apply?

Sec.
255.3 Other applicable regulations.

Subpart B—What Types of Projects Are Authorized?

255.10 Authorized projects.

Subpart C—How to Apply for a Grant

255.20 Application contents.

Subpart D—How Grants Are Made

255.30 Is priority given to certain applicants?
255.31 How applications are evaluated.
255.32 Selection criterion: Educational need. (0 to 15 points)
255.33 Selection criterion: Lack of comparable services. (0 to 15 points)
255.34 Selection criterion: Project design. (0 to 20 points)
255.35 Selection criterion: Parental and community involvement. (0 to 15 points)
255.36 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
255.37 Selection criterion: Adequacy of resources. (0 to 5 points)
255.38 Selection criterion: Staff. (0 to 10 points)
255.39 Selection criterion: Evaluation plan. (0 to 10 points)
255.40 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Title IV, Part B, of Pub. L. 92-318, 86 Stat. 339, as amended (20 U.S.C. 3385(a), (c)), unless otherwise noted.

SOURCE: 45 FR 34166, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 255.1 What is the purpose of this program?

This program provides financial assistance under Part B of the Indian Education Act for—

(a) Educational service projects designed to improve educational opportunities for Indian children of preschool, elementary school, and secondary school age. Projects must be designed to provide educational services that are not otherwise available to those children in sufficient quantity or quality;

(b) Enrichment projects that introduce innovative and exemplary approaches, methods, and techniques into the education of elementary and secondary school Indian children.

(ESEA, Section 1005(a)(2), (c); 20 U.S.C. 3385(a)(2), (c))

§ 255.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to this program.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

Subpart B—What Types of Projects Are Authorized?

§ 255.10 Authorized projects.

(a) Projects that may be supported include, but are not limited to, those that—

(1) Provide Indian children with culturally related instruction during the school day through a cooperative effort between a public school and an Indian educational center;

(2) Stimulate interest in careers directly related to the manpower needs of the Indian community;

(3) Provide special education services for handicapped and for gifted and talented Indian children;

(4) Provide accelerated courses in areas such as mathematics, science, or tribal management;

(5) Introduce a new approach to the teaching of reading;

(6) Establish after-school education centers;

(7) Stimulate interest in tribal culture and heritage by involving members of the community in instruction;

(8) Are designed to prevent alcoholism and drug abuse;

(9) Provide opportunities for students to become involved in the arts or other extra-curricular activities; and

(10) Overcome sex-stereotypes relating to occupations.

(b) The types of projects listed in paragraph (a) of this section are examples. Projects should be designed to meet needs identified in the applicant's service area.

(ESEA, Section 1005(a)(2), (c); 20 U.S.C. 3385(a)(2), (c))

Subpart C—How To Apply for a Grant

§ 255.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including a statement of the number of children who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The instruments or methods to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of these who will conduct the evaluation.

(d) Documentation that parents of the children who will participate in the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(e) Information showing that the applicant will coordinate the use of funds received under this program with other resources available to it to ensure that, consistent with the project's purpose, there will be a comprehensive program to improve the educational opportunities of Indian children.

(f) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type that the project is intended to meet, provisions for the participation of those children on an equitable basis.

(ESEA, Section 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

Subpart D—How Grants Are Made?

§ 255.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 255.32 through 255.40, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, Section 1005(f)(1); 20 U.S.C. 3385(f)(1))

§ 255.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 255.32 through 255.40. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 255.32 through 255.40 is 100.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.32 Selection criterion: Educational need. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the Indian children in the service area need the proposed services.

(b) In making this determination, the Secretary considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Secretary considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian children who need the proposed services; and

(2) The severity of the need, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.33 Selection criterion: Lack of comparable services. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the proposed services are presently unavailable in the service area in sufficient quantity or quality.

(b) In making this determination, the Secretary considers—

(1) A description of other services, including those offered by the applicant and by the schools attended by Indian children, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of children who receive those services;

(3) The number of children who need but do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the children to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.34 Selection criterion: Project design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.35 Selection criterion: Parental and community involvement. (0 to 15 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA, Section 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

§ 255.36 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.37 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.38 Selection criterion: Staff. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(c), (f)(1)(C); 20 U.S.C. 3385(c), (f)(1)(C))

§ 255.39 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective quantifiable method, including a measurement of the project's effectiveness in meeting the needs of the participating students, to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

§ 255.40 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general, and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

PART 256—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN CHILDREN

Subpart A—General

Sec.

256.1 What is the purpose of this program?
256.2 Who is eligible to apply?
256.3 Other applicable regulations.

Subpart B—What Types of Projects Are Authorized?

256.10 Authorized projects.

Subpart C—How To apply for a Grant

256.20 Application contents.

Subpart D—How Grants Are Made

256.30 Is priority given to certain applicants?
256.31 How applications are evaluated.
256.32 Selection criterion: Need and rationale. (0 to 20 points)
256.33 Selection criterion: Project design. (0 to 15 points)
256.34 Selection criterion: Parental and community involvement. (0 to 10 points)
256.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
256.36 Selection criterion: Adequacy of resources. (0 to 5 points)
256.37 Selection criterion: Staff. (0 to 15 points)
256.38 Selection criterion: Evaluation design. (0 to 20 points)
256.39 Selection criterion: Commitment. (0 to 5 points)
256.40 Annual priorities.

AUTHORITY: Title IV, Part B, of Pub. L 92-318, 86 Stat. 339, as amended (20 U.S.C. 3385(a), (b)), unless otherwise noted.

SOURCE: 45 FR 34168, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 256.1 What is the purpose of this program?

This program provides assistance under Part B of the Indian Education Act for planning, pilot, and demonstration projects designed to improve educational opportunities for Indian children.

(ESEA, Section 1005(a)(1), (b); 20 U.S.C. 3385(a)(1), (b))

§ 256.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Elementary or secondary schools for Indian children supported by the Department of the Interior;

(d) Indian tribes;

(e) Indian organizations; and

(f) Indian institutions.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to this program.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

Subpart B—What Types of Projects Are Authorized?

§ 256.10 Authorized projects.

Projects that may be supported include, but are not limited to, those that—

(a) Test amd validate culturally related curriculum materials designed to improve the academic achievement of Indian children;

(b) Use culturally relevant techniques to lower the dropout rate among Indian children;

(c) Encourage Indian students to enter the fields of natural sciences and mathematics by developing and using culturally related curricula;

(d) Test and validate culturally relevant achievement tests; or

(e) Develop a comprehensive plan for the coordination of educational programs and services for children of a particular tribe.

(ESEA, Section 1005(a)(1), (b); 20 U.S.C. 3385(a)(1), (b))

Subpart C—How To Apply for a Grant

§ 256.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including a statement of the number of children who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The instruments or methods to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(d) Documentation that parents of the children who will participate in the project, and other members of the Indian community, adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(e) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type which the project is intended to meet, provisions for the participation of those children on an equitable basis.

(ESEA, Section 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

Subpart D—How Grants Are Made

§ 256.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 256.32 through 256.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, Section 1005(f)(1); 20 U.S.C. 3385(f)(1))

§ 256.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 256.32 through 256.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 256.32 through 256.39 is 100.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.32 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that address similar needs or have tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.33 Selection criterion: Project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.34 Selection criterion: Parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA, Section 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

§ 256.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.36 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.37 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

§ 256.38 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the children involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(b), (f)(1); 20 U.S. 3385(b), (f)(1))

§ 256.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, Section 1005(b); 20 U.S. 3385(b))

§ 256.40 Annual priorities.

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 256.10.

(b) The Secretary publishes the selected priorities, if any, in the FEDERAL REGISTER.

(c) In addition to the points awarded under §§ 256.32 through 256.39, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the selected priorities.

(ESEA, Section 1005(b); 20 U.S. 3385(b))

PART 257—EDUCATIONAL PERSONNEL DEVELOPMENT

Subpart A—General

Sec.

257.1 What is the purpose of this part?
257.2 Who is eligible to apply?
257.3 Other applicable regulations.

Subpart B—What Costs Are Allowable?

257.10 Stipends and dependency allowances.

Subpart C—How to Apply For a Grant

257.20 Application contents.

Subpart D—How Grants Are Made

257.30 Is priority given to certain applications?
257.31 How applications are evaluated.
257.32 Selection criterion: Need. (0 to 10 points)
257.33 Selection criterion: Project design. (0 to 25 points)
257.34 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

Sec.
257.35 Selection criterion: Adequacy of resources. (0 to 5 points)
257.36 Selection criterion: Staff. (0 to 15 points)
257.37 Selection criterion: Benefit to Indian students. (0 to 5 points)
257.38 Selection criteria: Evaluation plan. (0 to 10 points)
257.39 Selection criterion: Commitment. (0 to 20 points)

Subpart E—Selection of Participants

257.40 Preference to Indians.

AUTHORITY: Title IV, Part B, of Pub. L 92-318, 86 Stat. 339, as amended (20 U.S.C. 3385; and the Indian Education Act, Section 422, as amended (20 U.S.C. 3385a), unless otherwise noted.

SOURCE: 45 FR 34170, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 257.1 What is the purpose of this part?

(a) This part governs two programs, one authorized by Section 1005(d) of the Elementary and Secondary Education Act of 1965, as added by Part B of the Indian Education Act, the other authorized by Section 422 of the Indian Education Act.

(b) These two programs support projects that—

(1) Prepare persons to serve Indian students as teachers, administrators, social workers, and ancillary educational personnel; and

(2) Improve the qualifications of persons serving Indian students in positions listed in paragraph (b)(1) of this section, including the provision of inservice training to those persons.

(c) Project participants may be prepared for positions such as—

(1) Classroom teachers;

(2) Special educators for handicapped or gifted and talented students;

(3) Bilingual-bicultural specialists;

(4) Guidance counselors and school psychologists;

(5) School administrators;

(6) Adult education specialists or instructors; and

(7) Community college administrators.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.2 Who is eligible to apply?

(a) Eligible applicants under ESEA, Section 1005(d) are—

(1) Institutions of higher education;

(2) State educational agencies (SEAs) in combination with institutions of higher education; and

(3) Local educational agencies (LEAs) in combination with institutions of higher education.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d))

(b) Eligible applicants under Section 422 of the Indian Education Act are—

(1) Institutions of higher education;

(2) Indian organizations; and

(3) Indian tribes.

(Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to these programs.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

Subpart B—What Costs Are Allowable?

§ 257.10 Stipends and dependency allowances.

(a) In addition to other costs that are reasonable and necessary to carry out an educational personnel development project, a grantee may, from project funds, pay to a participant who is a full-time student—

(1) A stipend to cover the participant's personal living expenses; and

(2) An allowance for dependents.

(b) Each year, the Secretary announces in the FEDERAL REGISTER the maximum stipend and allowance for dependents. The actual stipend and allowance for dependents paid to a participant shall not be less than—

(1) The amounts stated in the notice; minus

(2) Other financial assistance—other than loans—received or expected to be received by the participant for his or her living expenses and for the support of the participant's dependents.

(c) A grantee may provide a participant a stipend and an allowance for dependents up to the maximum amounts specified in the notice described in paragraph (b) of this section, so long as the total financial assistance—other than loans—received or expected to be received by the participant for those purposes does not exceed the participant's need for that assistance.

(d) In general, a grantee may not pay a stipend or dependency allowance to a participant who is not a full-time student. However, the Secretary may approve payments of partial stipends to a teacher aide who must take leave without pay in order to be a part-time student.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

Subpart C—How To Apply for a Grant

§ 257.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of project participants.

(b) (1) A description of the plan for giving preference to Indians in the selection of participants; and

(2) A statement of the number and percentage of participants who will be Indian.

(c) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The instruments or methods to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, in its final performance report, provide information on the selection, academic performance, and job placement of project participants; and

(f) An assurance that it will cooperate with follow-up studies of project participants conducted or authorized by the Secretary.

(ESEA, Section 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

Subpart D—How Grants Are Made

§ 257.30 Is priority given to certain applications?

In addition to the points awarded under §§ 257.32 through 257.39, the Secretary awards—

(a) Ten points to applications in which all participants will be enrolled in a course of study resulting in a degree at the bachelor's level or higher;

(b) Under the program authorized by Section 1005(d) of ESEA, ten points to applications from eligible Indian institutions;

(c) Under the program authorized by Section 1005(d) of ESEA, ten points to applications for projects in which 100 percent of the participants will be Indian; and

(d) Under the program authorized by Section 422 of the Indian Education Act, twenty-five points to applications from Indian tribes, Indian organizations, and eligible Indian institutions.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.31 How applications are evaluated.

(a) The Secretary reviews and approves applications under Section 1005(d) of the ESEA separately from those under Section 422 of the Indian Education Act.

(b) The Secretary evaluates an application on the basis of the criteria in §§ 257.32 through 257.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 257.32 through 257.39 is 100.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.32 Selection criterion: Need. (0 to 10 points)

The Secretary reviews each application to determine the need for the type of personnel to be trained, as indicated by a current survey or other appropriate documentation.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.33 Selection criterion: Project design. (0 to 25 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) Educational approaches that take into account the culture and heritage of Indian people;

(5) Techniques designed specifically to enable project participants to meet the needs of Indian students; and

(6) A plan for effective administration of the project.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.34 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.35 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.36 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.37 Selection criterion: Benefit to Indian students. (0 to 5 points)

(a) The Secretary reviews each application to determine the likelihood that, after receiving training under the project, the participants will serve Indian students as teachers, administrators, teacher aides, or ancillary educational personnel.

(b) In making this determination, the Secretary considers—

(1) Policies or practices of the applicant, such as those governing selection of participants, that increase the likelihood that participants will serve Indian students upon the completion of the training; and

(2) Evidence that, upon completion of the training, participants will be able to obtain positions that involve the education of Indian students.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.38 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

§ 257.39 Selection criterion: Commitment. (0 to 20 points)

(a) *Applications under ESEA, Section 1005(d).*

(1) The Secretary reviews each application under ESEA, Section 1005(d) to determine the extent to which the applicant is committed to the education of Indian people in general, and to the project's objectives in particular.

(2) In making this determination, the Secretary considers—

(i) Official statements in the applicant's publications such as course catalogs;

(ii) The human, physical, and financial resources that the applicant plans to commit to the project; and

(iii) Other efforts of the applicant to improve educational opportunities for Indian people.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d))

(b) *Applications under Section 422 of the Indian Education Act.* (1) The Secretary reviews each application under Section 422 of the Indian Education Act to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(2) In making this determination with respect to applications from institutions of higher education, the Secretary considers the factors listed in paragraph (a)(2) of this section.

(3) In making this determination with respect to applications from Indian tribes and Indian organizations, the Secretary considers—

(i) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(ii) Other efforts by the applicant to improve educational opportunities for Indian students; and

(iii) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Indian Education Act, Section 422; 20 U.S.C. 3385a)

Subpart E—Selection of Participants

§ 257.40 Preference to Indians.

In selecting project participants, a grantee shall give preference to Indians.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

PART 258—EDUCATIONAL SERVICES FOR INDIAN ADULTS

Subpart A—General

Sec.
258.1 What is the purpose of this program?
258.2 Who is eligible to apply?
258.3 Other applicable regulations.

Subpart B—What Types of Projects and Activities Are Authorized?

258.10 Authorized projects
258.11 Authorized activities.

Subpart C—How To Apply for a Grant

258.20 Application contents.

Subpart D—How Grants Are Made

258.30 How applications are evaluated.
258.31 Selection criterion: Educational need. (0 to 15 points)
258.32 Selection criterion: Lack of comparable services. (0 to 15 points)
258.33 Selection criterion: Project design. (0 to 20 points)
258.34 Selection criterion: Community involvement. (0 to 15 points)
258.35 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
258.36 Selection criterion: Adequacy of resources. (0 to 5 points)
258.37 Selection criterion: Staff. (0 to 10 points)
258.38 Selection criterion: Evaluation plan. (0 to 10 points)
258.39 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Title IV, Part C. of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

SOURCE: 45 FR 34172, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 258.1 What is the purpose of this program?

This program provides financial assistance under Part C of the Indian Education Act for educational service projects designed to improve educational opportunities for Indian adults.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.2 Who is eligible to apply?

Eligible applicants are—

(a) Indian tribes;

(b) Indian organizations; and

(c) Indian institutions.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to this program.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

Subpart B—What Types of Projects and Activities Are Authorized?

§ 258.10 Authorized projects.

Projects that may be supported include but are not limited to those that—

(a) Enable Indian adults to acquire basic educational skills, including literacy;

(b) Enable Indian adults to continue their education through the secondary school level;

(c) Are designed for the education of handicapped or elderly Indian adults;

(d) Establish career education projects designed to improve employment opportunities; and

(e) Are designed for incarcerated Indian adults.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.11 Authorized activities.

(a) Services and instruction provided under this part shall be below the college level.

(b) Activities that are designed solely to prepare individuals to enter a specific occupation or cluster of closely related occupations in an occupational field after participating in a project are not authorized under the programs in this part. However, activities that are designed to prepare individuals to benefit from occupational training, or activities that incidentally involve the teaching of employment-related skills, are allowable if otherwise authorized under this part.

(Adult Education Act, Sections 303(b), 316(b); 20 U.S.C. 1202(b), 1211a(b))

Subpart C—How To Apply for a Grant

§ 258.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activites for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, on an annual basis, submit to the Secretary the following information about the project:

(1) The number of people who were served.

(2) The number of dropouts from the project.

(3) The number of people who receive a Graduate Equivalency Diploma (GED) or the increases in grade levels attained by participants; and

(f) An assurance that it will cooperate in follow-up studies of project participants conducted or authorized by the Secretary.

(Adult Education Act, Section 316 (b), (d); 20 U.S.C. 1211a (b), (d))

Subpart D—How Grants Are Made

§ 258.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 258.31 through 258.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.31 Selection criterion: Educational need. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the Indian adults in the service area need the proposed services.

(b) In making this determination, the Secretary considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Secretary considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian adults who need the proposed services; and

(2) The severity of the need, as indicated by elementary and secondary school dropout or absenteeism rates, average grade level completed, unemployment rates, or other appropriate measures.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.32 Selection criterion: Lack of comparable services. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the proposed services are currently unavailable in the service area in sufficient quantity or quality, or both.

(b) In making this determination, the Secretary considers—

(1) A description of other services in the area, including those offered by the applicant, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of Indian adults who receive those services;

(3) The number of Indian adults who need but do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the the adults to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.33 Selection criterion: Project design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.34 Selection criterion: Community involvement. (0 to 15 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(b), (d); 20 U.S.C. 1211a(b), (d))

§ 258.35 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.36 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.37 Selection criterion: Staff. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

§ 258.38 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(b), (d)(2); 20 U.S.C. 1211a(b), (d)(2))

§ 258.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

PART 259—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

Subpart A—General

Sec.
259.1 What is the purpose of this program?
259.2 Who is eligible to apply?
259.3 Other applicable regulations.

Subpart B—What Type of Projects Are Authorized?

259.10 Authorized projects.

Subpart C—How to Apply for a Grant

259.20 Application contents.

Subpart D—How Grants Are Made

Sec.
259.30 Is priority given to certain applicants?
259.31 How applications are evaluated.
259.32 Selection criterion: Need and rationale. (0 to 20 points)
259.33 Selection criterion: Project design. (0 to 15 points)
259.34 Selection criterion: Community involvement. (0 to 10 points)
259.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
259.36 Selection criterion: Adequacy of resources. (0 to 5 points)
259.37 Selection criterion: Staff. (0 to 15 points)
259.38 Selection criterion: Evaluation design. (0 to 20 points)
259.39 Selection criterion: Commitment. (0 to 5 points)
259.40 Annual priorities.

AUTHORITY: Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

SOURCE: 45 FR 34174, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 259.1 What is the purpose of this program?

This program provides financial assistance under Part C of the Indian Education Act for planning, pilot, and demonstration projects designed to improve employment and educational opportunities for Indian adults.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.3 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to this program.

(b) The provisions of 34 CFR 258.11, relating to authorized activities, apply to this program.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

Subpart B—What Types of Projects Are Authorized?

§ 259.10 Authorized projects.

Projects that may be supported include, but are not limited to, those that develop, test, and demonstrate the effectiveness of—

(a) Educational approaches designed to assist Indian adults in achieving basic literacy;

(b) Methods for improving the basic skills of Indian adults so that they may benefit from occupational training;

(c) Educational approaches designed to assist Indian adults in qualifying for high school equivalency certificates in the shortest time feasible.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

Subpart C—How to Apply for a Grant

§ 259.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, on an annual basis, submit to the Secretary the following information about the project—

(1) The number of people who were served;

(2) The number of dropouts from the project; and

(3) The number of people who receive a Graduate Equivalence Diploma (GED) or the increases in grade levels attained by participants; and

(f) An assurance that it will cooperate in follow-up studies of project participants conducted or authorized by the Secretary.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

Subpart D—How Grants Are Made

§ 259.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 259.32 through 259.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

§ 259.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 259.32 through 259.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 259.32 through 259.39 is 100.

(Adult Education Act, Section 316 (a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.32 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project and the soundness of the rational for the project.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian adults;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the adults to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.33 Selection criterion: Project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.34 Selection criterion: Community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211(a)(1), (2), (d))

§ 259.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.36 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2)),

§ 259.37 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.38 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

§ 259.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In each case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 259.40 Annual priorities.

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 259.10.

(b) The Secretary publishes the selected priorities, if any, in the FEDERAL REGISTER.

(c) In addition to the points awarded under §§ 259.32 through 259.39, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed activities that address the selected priorities.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2)

PART 260—ADULT EDUCATION RESEARCH AND DEVELOPMENT PROJECTS

Subpart A—General

Sec.
260.1 What is the purpose of this program?
260.2 Who is eligible to apply?
260.3 Other applicable regulations.

Subpart B—[Reserved]

Subpart C—How to Apply for a Grant

260.20 Application contents.

Subpart D—How Grants Are Made

260.30 Is priority given to certain applicants?
260.31 How applications are evaluated.
260.32 Selection criterion: Need for the project. (0 to 15 points)
260.33 Selection criterion: Research and development design. (0 to 25 points)
260.34 Selection criterion: Community involvement. (0 to 5 points)
260.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

Sec.
260.36 Selection criterion: Adequacy of resources. (0 to 5 points)
260.37 Selection criterion: Staff. (0 to 15 points)
260.38 Selection criterion: Evaluation plan. (0 to 15 points)
260.39 Selection criterion: Adaptability. (0 to 5 points)
260.40 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

SOURCE: 45 FR 34176, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 260.1 What is the purpose of this program?

This program provides financial assistance under Part C of the Indian Education Act for research and development projects that develop innovative and effective techniques to assist Indian adults in—

(a) Attaining basic literacy; and

(b) Qualifying for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.3 Other applicable regulations.

(a) The provisions of 34 CFR Parts 75 and 250 apply to this program.

(b) The provisions of 34 CFR 258.11, relating to authorized activities, apply to this program.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

§ 260.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(Adult Education Act, Section 316(a)(3) (d); 20 U.S.C. 1211a(a)(3), (d))

Subpart D—How Grants Are Made

§ 260.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 260.32 through 260.40, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

§ 260.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in

§§ 260.32 through 260.40. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 260.32 through 260.40 is 100.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.32 Selection criterion: Need for the project. (0 to 15 points)

(a) The Secretary reviews each application to determine the need for the project.

(b) In making this determination, the Secretary considers the clarity and accuracy of the statement describing the lack of effective techniques for assisting Indian adults to attain basic literacy and to qualify for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.33 Selection criterion: Research and development design. (0 to 25 points)

(a) The Secretary reviews each application to determine the quality of the research and development design for the project.

(b) In making this determination, the Secretary considers—

(1) The extent to which the applicant exhibits thorough knowledge of previous work in the field and relates the proposed research and development to it;

(2) The extent to which objectives and hypotheses are stated in clear and measurable terms;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected; and

(4) The degree to which there is an activity plan, including a time-line, that clearly and realistically outlines the activities related to each objective.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.34 Selection criterion: Community involvement. (0 to 5 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

§ 260.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.36 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.37 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key

staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.38 Selection criterion: Evaluation plan. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

§ 260.39 Selection criterion: Adaptability. (0 to 5 points)

The Secretary reviews each application to determine the extent to which the techniques developed by the project are likely to be effective in other settings in assisting Indian adults to—

(a) Attain basic literacy; and

(b) Qualify for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 260.40 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

PART 261—ADULT EDUCATION SURVEYS

Subpart A—General

Sec.
261.1 What is the purpose of this program?
261.2 Who is eligible to apply?
261.3 Other applicable regulations.

Subpart B—[Reserved]

Subpart C—How to Apply for a Grant

261.20 Application contents.

Subpart D—How Grants Are Made

261.30 Is priority given to certain applicants?
261.31 How applications are evaluated.
261.32 Selection criterion: Need for the survey. (0 to 20 points)
261.33 Selection criterion: Survey and project. (0 to 25 points)
261.34 Selection criterion: Community involvement. (0 to 5 points)
261.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
261.36 Selection criterion: Adequacy of resources. (0 to 10 points)
261.37 Selection criterion: Staff. (0 to 15 points)
261.38 Selection criterion: Evaluation plan. (0 to 10 points)
261.39 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

SOURCE: 45 FR 34177, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 261.1 What is the purpose of this program?

(a) This program provides financial assistance under Part C of the Indian Education Act for projects to survey the extent of illiteracy and lack of high school completion among Indians.

(b) Surveys may be local, regional, or national in scope.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to this program.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

Subpart B—[Reserved]

Subpart C—How to Apply for a Grant

§ 261.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance.

(b) Documentation that individuals who will be affected by the survey, and other members of the Indian community, adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(c) A plan for evaluating the effectiveness of the survey in achieving its objectives.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

Subpart D—How Grants Are Made

§ 261.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 261.32 through 261.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

§ 261.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 261.32 through 261.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 261.32 through 261.39 is 100.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.32 Selection criterion: Need for the survey. (0 to 20 points)

(a) The Secretary reviews each application to determine the extent to which there is a need for the proposed survey.

(b) In making this determination, the Secretary considers the clarity and accuracy of the applicant's statement on the lack of reliable data concerning illiteracy and lack of high school completion among Indian adults in the population to be surveyed.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.33 Selection criterion: Survey and project design. (0 to 25 points)

(a) The Secretary reviews each application to determine the quality of the survey and project design.

(b) In making this determination, the Secretary considers—

(1) The appropriateness and soundness of—

(i) The sample size;

(ii) The method for selecting the sample;

(iii) The survey instrument to be used or the plan for developing and validating an instrument; and

(iv) The plan for analyzing the data to be collected;

(2) The extent to which the objectives are stated in clear and measurable terms;

(3) The degree to which there is an activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(4) The extent to which there is a plan for effective administration of the project.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.34 Selection criterion: Community involvement. (0 to 5 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian communty—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

§ 261.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

§ 261.36 Selection criterion: Adequacy of resources. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.37 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of the project staff.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.38 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's process and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 261.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

PART 262—ADULT EDUCATION DISSEMINATION AND EVALUATION PROJECTS

Subpart A—General

Sec.
262.1 What is the purpose of this program?
262.2 Who is eligible to apply?
262.3 Other applicable regulations.

Subpart B—[Reserved]

Subpart C—How to Apply for a Grant

262.20 Application contents.

Subpart D—How Grants Are Made

262.30 Is priority given to certain applicants?
262.31 How applications are evaluated.
262.32 Selection criterion: Need for the project. (0 to 20 points)
262.33 Selection criterion: Project design. (0 to 20 points)
262.34 Selection criterion: Community involvement. (0 to 5 points)
262.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
262.36 Selection criterion: Adequacy of resources. (0 to 10 points)
262.37 Selection criterion: Staff. (0 to 15 points)
262.38 Selection criterion: Evaluation plan. (0 to 15 points)
262.39 Selection criterion: Commitment. (0 to 5 points)

AUTHORITY: Adult Education Act, Section 316 (a)(5), (d); 20 U.S.C. 1211a (a)(5), (d), unless otherwise noted.

SOURCE: 45 FR 34179, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 262.1 What is the purpose of this program?

This program provides financial assistance under Part C of the Indian Education Act for projects that—

(a) Disseminate information and materials relating to programs that offer educational opportunities to Indian adults, including—

(1) Curriculum information;

(2) Results of evaluations;

(3) Information on how to participate in particular programs; and

(4) Information on how to start similar programs or operate projects that provide similar educational opportunities; and

(b) Evaluate the effectiveness of programs that offer educational opportunities to Indian adults.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.3 Other applicable regulations.

The provisions of 34 CFR Parts 75 and 250 apply to this program.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

Subpart B—[Reserved]

Subpart C—How to Apply for a Grant

§ 262.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will benefit from the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

Subpart D—How Grants Are Made

§ 262.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 262.32 through 262.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

§ 262.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 262.32 through 262.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 262.32 through 262.39 is 100.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.32 Selection criterion: Need for the project. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project.

(b) In making this determination for dissemination projects or project components, the Secretary considers—

(1) A statement of the Indian communities or other groups to whom information will be disseminated and an explanation of why those groups need the information; and

(2) The clarity and accuracy of the applicant's description of the current efforts of the applicant and others to disseminate information about Indian adult education to those groups and an explanation of why these efforts are inadequate.

(c) In making this determination for evaluation projects or project components, the Secretary considers—

(1) A description of other evaluations of programs that the applicant proposes to evaluate; and

(2) An explanation of why the proposed evaluation is needed.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.33 Selection criterion: Project design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination for dissemination projects or project components, the Secretary considers—

(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The description of the kinds and sources of information and materials to be disseminated;

(3) A description of the methods that will be used to disseminate the information;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(c) In making this determination for evaluation projects or project components, the Secretary considers—

(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The extent to which the applicant exhibits thorough knowledge of previous evaluation work in the field and relates the proposed evaluation to it;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.34 Selection criterion: Community involvement. (0 to 5 points)

The Secretary reviews each application to determine the extent to which the individuals who will benefit from the project and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

§ 262.35 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.36 Selection criterion: Adequacy of resources. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.37 Selection criterion: Staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the jobs descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 262.38 Selection criterion: Evaluation plan. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

§ 262.39 Selection criterion: Commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

PART 263—INDIAN FELLOWSHIP PROGRAM

Subpart A—General

Sec.
263.1 What is the purpose of this program?
263.2 Who is eligible to apply?
263.3 Definitions.
263.4 Which fields of study are eligible?
263.5 What is included in a fellowship?
263.6 Application contents: Evidence that the applicant is Indian.
263.7 Application contents: Evidence of admission or attendance.
263.8 Application contents: Transcripts.
263.9 Application contents: Other information and assurances.

Subpart B—How Fellows Are Selected

263.11 Is priority given to certain applicants?
263.12 How applications are evaluated.

Subpart C—What Conditions Must Be Met By Fellows?

263.21 Duration and continuation of fellowships.
263.22 Responsibilities of fellows.
263.23 Leave of absence.
263.24 Discontinuation of fellowships.
263.25 Alternate fellows.

AUTHORITY: Indian Education Act, Section 423 (20 U.S.C. 3385b) as amended, unless otherwise noted.

SOURCE: 45 FR 34180, May 21, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 263.1 What is the purpose of this program?

The Indian Fellowship program provides assistance to enable Indian students to pursue a course of study of not more than four academic years leading to—

(a) A graduate level degree in medicine, law, education, and related fields; or

(b) A graduate or undergraduate degree in engineering, business administration, natural resources, and related fields.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.2 Who is eligible to apply?

(a) An applicant must be an Indian as defined in § 263.3.

(b) An applicant must be a United States citizen or resident of the United States for other than a temporary purpose.

(c) A fellow in medicine, law, education, or a related field must be a full-time graduate student.

(d) A fellow in engineering, business administration, natural resources, or a related field must be a full-time graduate or undergraduate student.

(e) An undergraduate fellow must be recognized by his or her institution of higher education as a degree candidate in engineering, natural resources, business administration, or a related field.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.3 Definitions.

The following definitions apply to the terms in this part:

"Fellow" means the recipient of a fellowship under the Indian Fellowship Program.

"Fellowship" means an award under the Indian Fellowship Program.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies.

"Indian" means any individual who is—

(a) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(b) A descendant, in the first or second degree, of any individual described in paragraph (a) of this definition;

(c) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(d) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

"Indian tribe" means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska

Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" is defined in 34 CFR 250.4.

"Organized group of Indians" means an ethnically and culturally identifiable group of Indians, indigenous to the territory of what is now the United States, and which has been in substantially continuous existence throughout the history of the United States.

"Stipend" means the allowance for personal living expenses paid to a fellow.

"Undergraduate degree" means a bachelor's degree.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.4 Which fields of study are eligible?

(a) Eligible fields are medicine, law, education, engineering, business administration, natural resources, and related fields.

(b) The following fields are related to medicine:

(1) Veterinary medicine.
(2) Nursing.
(3) Dentistry.
(4) Optometry.
(5) Clinical psychology.
(6) Pharmacy.

(c) The following field is related to engineering:

(1) Architecture.

(d) The following fields are related to business administration:

(1) Accounting.
(2) Tribal administration.
(3) Public administration.

(e) The following fields are related to natural resources:

(1) Forestry.
(2) Watershed management.
(3) Range science.
(4) Land-use management.
(5) Fisheries.
(6) Environmental biology.
(7) Geology.
(8) Oceanography.

(f) The Secretary considers, on a case-by-case basis, the eligibility of applications for fellowships in fields other than those listed in paragraph (a) through (e) of this section.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.5 What is included in a fellowship?

(a) Subject to paragraphs (b) through (d) of this section, a fellowship includes—

(1) An amount to cover tuition and all other fees required of students in similar standing at the institution attended by the fellow;

(2) A stipend to cover the fellow's personal living expenses;

(3) An allowance for dependents;

(4) An allowance for books and other necessary instructional materials;

(5) In cases of extreme hardship, reasonable costs associated with necessary research;

(6) In cases of extreme hardship, a travel allowance for a fellow who must move from his or her residence to an institution of higher education.

(b) The Secretary includes in the annual application notice a statement of the maximum stipend and allowance for dependents. The actual stipend and allowance for dependents paid to a fellow are not less than—

(1) The amounts stated in the notice; minus

(2) Other financial assistance—other than loans—received or expected to be received by the fellow for the fellow's living expenses and for the support of the fellow's dependents.

(c) The Secretary may provide a fellow a stipend and an allowance for dependents up to the maximum amounts specified in the application notice, so long as the total financial assistance—other than loans—received or expected to be received by the fellow for those purposes does not exceed the fellow's need for that assistance.

(d) The Secretary does not award a fellowship in an amount greater than—

(1) The amount of the fellow's cost of attendance; less

(2) Other financial aid, received or expected to be received by the fellow.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.6 Application contents: Evidence that the applicant is Indian.

(a) If an applicant is a member of a tribe, band, or other organized group of Indians, the applicant shall include in an application—

(1) The name of the tribe, band, or other organized group of Indians with which the applicant claims membership; and

(2) The name and address of the organization that has updated and accurate membership data for the applicant's tribe, band, or other organized group of Indians, if such an organization exists.

(b) If an applicant is not a member of a tribe, band, or other organized group of Indians, the applicant shall submit the information required in paragraph (a) of this section for the parent or grandparent through whom the applicant claims eligibility.

(c) An applicant shall also submit—

(1) The tribal enrollment number of the applicant or of the parent or grandparent through whom the applicant claims eligibility; or

(2) At least one of the following as evidence that he or she is Indian as defined in § 263.3:

(i) A copy of the Bureau of Indian Affairs Certification of Degree of Indian Blood for the applicant or for the parent or grandparent through whom the applicant claims eligibility.

(ii) A copy of the tribal enrollment document of the applicant or of the parent or grandparent through whom the applicant claims eligibility.

(iii) A statement from a recognized official of the appropriate tribe, band, or other organized group of Indians that the applicant or a parent or grandparent of the applicant is a member of that tribe, band, or group.

(iv) Evidence that the applicant is considered by the Secretary of the Interior to be an Indian.

(v) Evidence that the applicant is an Eskimo, Aleut, or other Alaska Native.

(vi) If there is no organization that maintains updated and accurate membership data for the appropriate tribe, band, or other organized group of Indians, other evidence satisfactory to the Secretary that the applicant is Indian.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

§ 263.7 Application contents: Evidence of admission or attendance.

(a) An applicant shall submit evidence that he or she is in attendance or has been accepted for admission as a full-time student at an institution of higher education in one of the eligible fields of study listed in § 263.1 or § 263.4.

(b) An applicant who has not yet been accepted for admission may submit an application that the Secretary may consider, provided that the applicant is accepted by an institution of higher education by a subsequent date to be specified by the Secretary.

(c) The Secretary may require evidence that an applicant will be enrolled in an accredited program of study.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.8 Application contents: Transcripts.

(a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.9 Application contents: Other information and assurances.

(a) An applicant shall submit information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(b) An applicant shall submit information the Secretary may require in order to determine the extent of the applicant's financial need.

(c) An applicant shall submit other information and assurances the Secretary may require, including an assurance that he or she will cooperate in any evaluations or follow-up studies of the Indian Fellowship Program conducted or authorized by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart B—How Fellows Are Selected

§ 263.11 Is priority given to certain applicants?

In selecting fellows in the fields of engineering, natural resources, business administration, and related fields, the Secretary, in addition to the points awarded under § 263.12, awards 15 points to applicants for graduate fellowships.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.12 How applications are evaluated.

The Secretary evaluates and ranks an application with applications from the same field and related fields. The Secretary evaluates an application on the basis of the criteria listed below. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under the criteria in this section is 100.

(a) *Financial need.* (0 to 20 points)

The extent to which the application demonstrates the financial need of the applicant.

(b) *Academic record.* (0 to 30 points)

The quality of the academic record of the applicant. In addition to transcripts, this may include standardized test scores, scholarly publications, honors, and awards.

(c) *Other evidence of potential success.* (0 to 30 points)

The extent to which there is evidence other than the academic record that the applicant will be successful in his or her field. This may include references, statements by the applicant, evidence of related employment experience or community service, and other information requested by the Secretary.

(d) *Service to Indians.* (0 to 20 points)

The likelihood that the applicant, upon receipt of his or her degree, will serve Indians. This may be demonstrated by endorsement of a tribe or Indian group, references, statements by the applicant, evidence of employment experience or community service involving Indians, and other information requested by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart C—What Conditions Must Be Met By Fellows?

§ 263.21 Duration and continuation of fellowships.

(a) A fellowship may be awarded for a period not to exceed four years. However, the Secretary reviews the status of each fellow at the end of each year. The Secretary continues support only if the fellow has—

(1) Complied with the award terms and conditions, Section 423 of the Indian Education Act, and the regulations in this part; and

(2) Remained a full-time student in the field in which the fellowship was awarded.

(b) A fellowship terminates when the fellow receives the degree being pursued. If the fellow wishes to pursue a subsequent degree, he or she may apply for a new fellowship.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.22 Responsibilities of fellows.

A fellow shall—

(a) Submit to the Secretary two copies of his or her official grade reports at the close of each academic term;

(b) Report to the Secretary any interruption of his or her studies and either—

(1) Request a leave of absence; or

(2) Relinquish the fellowship;

(c) Report to the Secretary and the institution of higher education all other sources of financial assistance that he or she is receiving and for which he or she has applied; and

(d) Report to the Secretary any changes in academic status.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.23 Leave of absence.

(a) A fellow may request a leave of absence for a period not longer than 12 months.

(b) A leave of absence is permissible only if—

(1) It is approved by the Secretary; and

(2) The institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.24 Discontinuation of fellowships.

(a) The Secretary may discontinue a fellowship if a fellow fails to comply with the provisions of this part or with the terms and conditions of the fellowship award.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.25 Alternate fellows.

If a fellowship is vacated or discontinued, the Secretary may designate an alternate. The Secretary may award a fellowship to the alternate for a period of study not in excess of the remainder of the period or time for which the fellowship it replaces was awarded.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

PART 270—DESEGREGATION OF PUBLIC EDUCATION

Subpart A—General Provisions

Sec.

270.01 Purpose.
270.02 Regulations that apply to the Desegregation of Public Education program.
270.03 Definitions.
270.04 Eligibility for race desegregation assistance.
270.05 Eligibility for sex desegregation assistance.
270.06 Eligibility for national origin desegregation assistance.
270.07 Stipends.
270.08 Travel allowances.

Subpart B—State Educational Agencies

Sec.

270.11 Eligible applicants.
270.12 General requirements.
270.13 Authorized assistance—race desegregation.
270.14 Authorized assistance—sex desegregation.
270.15 Authorized assistance—national origin desegregation.
270.16 [Reserved]
270.17 Criteria for awards—race desegregation.
270.18 Criteria for awards—sex desegregation.
270.19 Criteria for awards—national origin desegregation.
270.20 Funding procedures.
270.21 Records.

Subpart C—Race, Sex, and National Origin Desegregation Assistance Centers

270.31 Eligible applicants.
270.32 General requirements.
270.33 Authorized assistance.
270.34 [Reserved]
270.35 Criteria for awards—race desegregation.
270.36 Criteria for awards—sex desegregation.
270.37 Criteria for awards—national origin desegregation.
270.38 Funding procedures.
270.39 Records.

Subpart D—Race and Sex Desegregation Training Institutes

270.51 Eligible applicants.
270.52 Authorized training—race desegregation.
270.53 Authorized training—sex desegregation.
270.54 [Reserved]
270.55 Criteria for awards—race desegregation.
270.56 Criteria for awards—sex desegregation.
270.57 Funding procedures.

Subpart E—Grants to School Boards for Sex Desegregation

270.61 Eligible applicants.
270.62 Authorized assistance.
270.63 [Reserved]
270.64 Criteria for awards.
270.65 Funding procedures.

Subpart F—Special Grants to School Boards for Race and National Origin Desegregation

270.71 Eligible applicants.
270.72 Authorized activities.
270.73 Applications.
270.74 Funding procedures.

SOURCE: 43 FR 32379, July 26, 1978, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General Provisions

§ 270.01 Purpose.

The purpose of awards under this part is to help solve problems related to the race, sex, and national origin desegregation of public elementary and secondary schools.

(42 U.S.C. 2000c-2000c-5)

[45 FR 22540, Apr. 3, 1980]

§ 270.02 Regulations that apply to the Desegregation of Public Education program.

(a) The regulations in this Part 270 govern grants under the Desegregation of Public Education program.

(b) Awards under this program are subject to the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(c) 34 CFR 75.219(a) and 75.220, relating to the selection of certain projects for funding without competition do not apply to any award under this program.

(d) The following provisions of EDGAR do not apply to Race, Sex, and National Origin Desegregation Assistance Centers under Subpart C:

(1) 34 CFR 75.250(a), 75.253 (a), (b) and (d), and 75.254(a), relating to approval of continuation awards.

(2) Sections 75.232(b) and 75.233, relating to the amount of a grant.

(e) The provisions of 34 CFR 75.217 and 75.219(c) of EDGAR, relating to the selection of projects, do not apply to Special Grants to School Boards for Race and National Origin Desegregation under Subpart F.

(20 U.S.C. 1221e-3(a)(1); 42 U.S.C. 2000c-2000c-5)

[45 FR 22540, Apr. 3, 1980]

§ 270.03 Definitions.

The following definitions apply to the terms used in this part:

"Dominant language" means the language most relied upon for communication in the home.

(42 U.S.C. 2000c-2000c-5)

"Institution of higher education" means an educational institution in any State that is legally authorized to provide, and does provide, education above the secondary school level in that State.

(42 U.S.C. 2000c-3)

"National origin desegregation" means providing whatever special services are necessary to ensure that a student whose dominant language is not English is not limited in his or her participation in educational programs by a lack of proficiency in English.

(42 U.S.C. 2000c(b); *Lau* v. *Nichols*, 414 U.S. 563 (1974))

"Public school" means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(42 U.S.C. 2000c(c))

"Public school personnel" means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

(42 U.S.C. 2000c(c); 2000c-2000c-5)

"Race desegregation" means the assignment of students to public schools and within those schools without regard to their race. "Race desegregation" does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

(42 U.S.C. 2000c(b); *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 878-880 (5th Cir. 1966), *cert. den.* 389 U.S. 840 (1967))

"Race stereotype" means an assumption that members of a racial group share common abilities, interests, values, or roles because they are members of that group.

(42 U.S.C. 2000c-2000c-5)

"Responsible governmental agency" means any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

(42 U.S.C. 2000c-2)

"School board" means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

(42 U.S.C. 2000c(d))

"Sex bias" means an attitude that supports structuring the educational development of boys and girls differently on any basis other than physiological differences.

(42 U.S.C. 2000c-2000c-5)

"Sex desegregation" means the assignment of students to public schools and within those schools without regard to their sex, including providing students with a full opportunity for participation in all educational programs regardless of their sex.

(42 U.S.C. 2000c(b))

"Sex role stereotype" means an assumption that females or males, because they share a common gender, also share common abilities, interests, values or roles.

(42 U.S.C. 2000c-2000c-5)

"Title VI" means Title VI of the Civil Rights Act of 1964, as amended.

(42 U.S.C. 2000d *et seq.*)

"Title IX"' means Title IX of the Education Amendments of 1972, as amended.

(20 U.S.C. 1681-1683, 1685, 1686)

[43 FR 32379, July 26, 1978; 43 FR 46021, Oct. 5, 1978, as amended at 45 FR 22540, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 270.04 Eligibility for race desegregation assistance.

(a) A school board or other responsible governmental agency is eligible to receive race desegregation assistance under this part only if—

(1) It is preparing a plan to correct conditions of racial separation in its schools that are the result of State or local law or official action; or

(2) It has prepared, but has not yet begun to implement, a plan to correct those conditions; or

(3) It is implementing a plan to correct those conditions; or

(4) It has completed the implementation of a plan to correct those conditions and is still experiencing problems resulting from the correction of those conditions.

(b) In demonstrating its eligibility under this section, a school board or other responsible governmental agency need not show that it is subject to the order of a court or agency to correct the conditions described in paragraph (a) of this section.

(42 U.S.C. 2000c(b); 42 U.S.C. 2000c-2000c-5; *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 878-880 (5th Cir. 1966), *cert. den.* 389 U.S. 840 (1967))

§ 270.05 Eligibility for sex desegregation assistance.

Any school board or other responsible governmental agency is eligible to receive sex desegregation assistance under this part.

(42 U.S.C. 2000c-2000c-5)

§ 270.06 Eligibility for national origin desegregation assistance.

Any school board or other responsible governmental agency is eligible to receive national origin desegregation assistance under this part.

(42 U.S.C. 2000c-2000c-5)

§ 270.07 Stipends.

(a) The recipient of an award under this part may pay stipends to public school personnel who participate in technical assistance or training activities funded under this part for the period of their attendance. The payment of a stipend is authorized only if—

(1) The person to whom the stipend is paid receives no other compensation for that period;

(2) The period of attendance for which the stipend is paid is not less than 5 hours a day; and

(3) The Secretary has determined in advance that the payment of a stipend is necessary to the success of the technical assistance or training activity.

(b) If a responsible governmental agency pays substitutes for public school personnel who attend a technical assistance or training activity provided by a recipient under this part and who are being compensated by that agency for the period of their attendance, the recipient may reimburse that agency for the costs of paying substitutes for those persons for the period of their attendance.

(c) The amount of a stipend or of a reimbursement to a responsible governmental agency authorized under this section is up to $6 for each hour of a participant's attendance. However, the recipient may not pay a stipend to, or a reimbursement for, any participant in an amount that exceeds either—

(1) $30 for any day; or

(2) $150 for any week.

(42 U.S.C. 2000c-2000c-5)

§ 270.08 Travel allowances.

(a) The recipient of an award under this part may pay a travel allowance to a person who attends a technical assistance or training activity funded under this part only if—

(1) The period of the participant's attendance at the technical assistance or training activity is not less than 5 hours a day; and

(2) The Secretary has determined in advance that the payment of a travel allowance to that person is necessary to the success of the technical assistance or training activity.

(b) The amount of a travel allowance authorized under this section is the reasonable round trip cost of transportation between the location at which the technical assistance or training activity is provided and the participant's place of residence or employment (whichever is closer) and the cost of lodging and meals. These costs may be charged on an actual basis, or a per diem and mileage basis, or on a combination of the two, so long as the charge is reasonable. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available.

(c) If a participant leaves before completing the scheduled technical assistance or training activity, the recipient may pay the cost of the participant's transportation to his or her residence or place of employment only if the participant left because of circumstances not reasonably within his or her control.

(42 U.S.C. 2000c-2000c-5)

Subpart B—State Educational Agencies

§ 270.11 Eligible applicants.

Any State educational agency is eligible to submit an application under this subpart.

(42 U.S.C. 2000c-2)

§ 270.12 General requirements.

(a) The recipient of an award under this subpart may use funds under the award only to provide technical assistance (including training) in the preparation, adoption, and implementation of plans for race, sex and/or national origin desegregation, including assistance in coping with educational problems occasioned by that desegregation.

(b) The recipient may provide assistance under the award only if assistance is requested by a responsible governmental agency (other than the State educational agency) in its State.

(c) The recipient may provide assistance under the award only to the following persons:

(1) Public school personnel; and

(2) Students enrolled in public schools, parents of those students, and other community members.

(d) Upon receiving an award, the recipient shall notify all responsible governmental agencies in its State of the availability of assistance authorized under the award and of the means by which that assistance may be requested.

(e) The recipient shall coordinate assistance that it provides under the award with assistance provided in its

State by any desegregation assistance center funded under Subpart C of this part to provide the same type of assistance as the recipient. As part of this coordination, the recipient shall—

(1) Provide any such center with access to the records described in § 270.21;

(2) Develop plans to prevent duplication of assistance when a responsible governmental agency requests assistance from both the recipient and the center; and

(3) Refer responsible governmental agencies requesting assistance to the center when funds available under the award do not permit the recipient to provide assistance.

(42 U.S.C. 2000c-2)

§ 270.13 Authorized assistance—race desegregation.

(a) The recipient of an award to provide race desegregation assistance may provide assistance under the award only to a responsible governmental agency that is eligible under § 270.04.

(b) The recipient may provide assistance under the award only to persons described in § 270.12(c) who are, or are reasonably likely to be, directly affected by the preparation, adoption, or implementation of a race desegregation plan or by problems that have resulted from the implementation of that plan.

(c) The recipient may provide assistance in coping with problems resulting from the implementation of a race desegregation plan adopted more than 5 years before the provision of assistance only when the Secretary determines in advance that those problems are unusually severe, and that the proposed assistance is likely to be effective. If funds available under the award do not permit the recipient to provide assistance to all eligible responsible governmental agencies that have requested authorized assistance, the recipient shall give priority to assistance in coping with problems resulting from the implementation of a race desegregation plan adopted within the 3 years immediately preceding the provision of assistance.

(d) The recipient may provide technical assistance (including training) under the award only in the areas listed in this paragraph and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of race desegregation plans and in coping with educational problems resulting from race desegregation. The recipient may not provide assistance in connection with the provision of compensatory education or the development of basic skills. The recipient may provide assistance in the following areas:

(1) The preparation and adoption of race desegregation plans;

(2) The identification of educational problems that have arisen, or that may arise, from the implementation of a race desegregation plan;

(3) The development of methods of encouraging student, parent, and community support for, and involvement in, the race desegregation process;

(4) The recruitment of members of racial minority groups for employment in public schools;

(5) The development of procedures to prevent discrimination on the basis of race in public school employment practices, such as hiring, assignment, promotion, transfer, termination, and payment;

(6) The development of procedures to prevent student assignments within public schools (including assignments to ability groups) that discriminate on the basis of race;

(7) The development of disciplinary procedures that do not discriminate on the basis of race;

(8) Meeting other civil rights related requirements of the Emergency School Aid Act (sec. 706(d) of Pub. L. 92-318, as amended);

(9) The development of methods of encouraging the participation of students of all races in school activities;

(10) The identification of race stereotypes in textbooks and other curricular materials and the development of methods of countering their effects on students;

(11) The development of human relations activities designed to facilitate racial harmony in public schools; and

(12) The identification of Federal, State, and other resources that would assist in coping with educational problems occasioned by race desegregation, except that the recipient may not

assist in the preparation of applications for financial assistance.

(42 U.S.C. 2000c-2)

[43 FR 32379, July 26, 1978; 43 FR 46020, Oct. 5, 1978. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 270.14 Authorized assistance—sex desegregation.

The recipient of an award to provide sex desegregation assistance may provide technical assistance (including training) under the award only in the areas listed in this section and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of sex desegregation plans and in coping with educational problems resulting from sex desegregation. The recipient may provide assistance in the following areas:

(a) The development of programs to increase the understanding of public school personnel concerning the problems of sex bias in education and to avoid this bias in their work;

(b) The identification of sex bias and sex role stereotypes in textbooks and other curricular materials and the development of methods of countering their effects on students;

(c) The identification and resolution of educational problems that have arisen, or that may arise, in meeting the requirements of Title IX (and, in connection with that activity, of State laws prohibiting discrimination on the basis of sex in education);

(d) The preparation and dissemination to parents and students of materials explaining the requirements described in paragraph (c) of this section;

(e) The development of methods of encouraging student, parent, and community support for, and involvement in, the sex desegregation process;

(f) The recruitment of women and men for employment in public schools in positions in which they are underrepresented;

(g) The development of procedures for preventing discrimination on the basis of sex in public school employment practices, such as hiring, assignment, promotion, transfer, termination, and payment;

(h) The use of counseling materials and techniques that do not discriminate on the basis of sex; and

(i) The identification of Federal, State, and other resources that would assist in sex desegregation, except that the recipient may not assist in the preparation of applications for financial assistance.

(42 U.S.C. 2000c-2)

§ 270.15 Authorized assistance—national origin desegregation.

The recipient of an award to provide national origin desegregation assistance may provide technical assistance (including training) under the award only in the areas listed in this section and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of national origin desegregation plans and in coping with educational problems resulting from national origin desegregation. The recipient may provide assistance in the following areas:

(a) The development of procedures to identify students whose dominant language is not English and to assess their English language proficiency;

(b) The development of instructional programs for students whose dominant language is not English and who lack English language proficiency;

(c) The development of methods of encouraging student, parent, and community support for, and involvement in, the national origin desegregation process;

(d) The recruitment of members of national origin minority groups for employment in public schools;

(e) The development of procedures to prevent discrimination on the basis of national origin in public school employment practices, such as hiring, assignment, promotion, transfer, termination, and payment;

(f) The identification and resolution of educational problems that have arisen, or that may arise, in meeting the requirements of Title VI relating to discrimination on the basis of national origin (and, in connection with that activity, of State laws guaranteeing equal educational opportunity to students whose dominant language is not English and who lack English language proficiency);

(g) The preparation and dissemination of materials explaining the requirements described in paragraph (f) of this section, to parents and students in their dominant language;

(h) The development of procedures to insure that tests that purport to measure anything other than language skills (for example, social studies skills) do not in fact measure language skills; and

(i) The identification of Federal, State and other resources that would assist in national origin desegregation, except that the recipient may not assist in the preparation of applications for financial assistance.

(42 U.S.C. 2000c-2)

§ 270.16 [Reserved]

§ 270.17 Criteria for awards—race desegregation.

In assessing the merits of an application to provide race desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Commitment to race desegregation* (45 points). The extent to which (1) the State educational agency demonstrates its leadership in facilitating the elimination of racial separation in public schools in its State as indicated by policies, and procedures for their implementation, adopted by the agency to assist in that process (40 points); and (2) the project director would have access to the Chief State School Officer (5 points).

(b) *Proposed assistance* (35 points). The extent to which (1) the agency demonstrates its familiarity with the needs of responsible governmental agencies in its State for race desegregation assistance (9 points); (2) the assistance that the agency would provide is designed to meet those needs (15 points); (3) the agency demonstrates its familiarity with available technical assistance and training materials (3 points); (4) the agency demonstrates its ability to respond to requests for assistance to meet needs that may arise after it receives an award (4 points); and (5) the agency provides for effective coordination of its assistance with related activities, including those of the race desegregation assistance center serving its State (4 points).

(c) *Staffing* (15 points). (1) The extent to which the project director and professional staff who would be employed under the award have the experience and training needed to provide race desegregation assistance (12 points); and (2) whether these persons include members of the racial minority groups with respect to which assistance is likely to be requested (3 points).

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.18 Criteria for awards—sex desegregation.

In assessing the merits of an application to provide sex desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Commitment to sex desegregation* (25 points). The extent to which (1) the State educational agency demonstrates its leadership in facilitating sex desegregation in its State as indicated by policies, and procedures for their implementation, adopted by the agency to assist in the sex desegregation process (15 points); (2) the agency has taken steps to inform parents and students of the requirements of Title IX and of State laws prohibiting discrimination on the basis of sex in education (5 points); and (3) the project director would have access to the Chief State School Officer (5 points).

(b) *Proposed assistance* (45 points). The extent to which (1) the agency demonstrates its familiarity with the needs of responsible governmental agencies in its State for sex desegregation assistance (10 points); (2) the assistance that the agency would provide is designed to meet those needs (20 points); (3) the agency demonstrates its familiarity with available technical assistance and training materials (5 points); (4) the agency demonstrates its ability to respond to requests for assistance to meet needs that may arise after it receives an award (5 points); and (5) the agency provides for effective coordination of its assistance with related activities, including those of the sex desegregation assistance center serving its State (5 points).

(c) *Staffing* (25 points). The extent to which the project director and professional staff who would be employed under the award have the experience and training needed to provide sex desegregation assistance.

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.19 Criteria for awards—national origin desegregation.

In assessing the merits of an application to provide national origin desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Commitment to national origin desegregation* (25 points). The extent to which (1) the State educational agency demonstrates its leadership in facilitating national origin desegregation in its State as indicated by policies, and procedures for their implementation, adopted by the agency to assist in the national origin desegregation process (20 points); and (2) the project director would have access to the Chief State School Officer (5 points).

(b) *Proposed assistance* (45 points). The extent to which (1) the agency demonstrates its familiarity with the needs of responsible governmental agencies in its State for national origin desegregation assistance (10 points); (2) the assistance that the agency would provide is designed to meet those needs (20 points); (3) the agency demonstrates its familiarity with available technical assistance and training materials (5 points); (4) the agency demonstrates its ability to respond to requests for assistance to meet needs that may arise after it receives an award (5 points); and (5) the agency provides for effective coordination of its assistance with related activities, including those of the national origin desegregation assistance center serving its State (5 points).

(c) *Staffing* (25 points). (1) The extent to which the project director and professional staff who would be employed under the award have the experience and training needed to provide national origin desegregation assistance (20 points); and (2) whether these persons include members of the national origin minority groups with respect to which assistance is likely to be requested (5 points).

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.20 Funding procedures.

(a) *Approval of applications.* The Secretary assesses the merits of applications to provide race, sex, and national origin desegregation assistance on the basis of the criteria in § 270.17, § 270.18, and § 270.19, respectively. On the basis of these assessments the Secretary makes separate awards to provide race, sex and national origin desegregation assistance. The Secretary approves only those applications that receive a score of at least 60 points on the basis of the criteria in § 270.17, § 270.18, or § 270.19 (as applicable).

(b) *Amount of award.* (1) The Secretary sets the amount of an award on the basis of the magnitude of the expected needs of responsible governmental agencies for race, sex, or national origin desegregation assistance (as applicable), and the cost of providing assistance to meet those needs, in the State for which an application is approved, compared with the magnitude of the expected needs for that assistance, and the cost of providing it, in all States for which applications are approved. In setting the amount of an award to provide race desegregation assistance, the Secretary gives the greatest weight to the expected needs of responsible governmental agencies that have recently adopted race desegregation plans.

(2) In assessing the magnitude of expected needs, the Secretary considers the needs described in the applications submitted under this subpart and such other information concerning those needs as may be relevant.

(42 U.S.C. 2000c-2)

[43 FR 32379, July 26, 1978; 43 FR 46021, Oct. 5, 1978, as amended at 45 FR 22540, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 270.21 Records.

The recipient of an award under this subpart shall maintain a record of all requests for assistance it receives from responsible governmental agencies in its State, and of the assistance provided in response to those requests.

(42 U.S.C. 2000c-2)

Subpart C—Race, Sex and National Origin Desegregation Assistance Centers

§ 270.31 Eligible applicants.

Any public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to submit an application under this subpart.

(42 U.S.C. 2000c-2)

§ 270.32 General requirements.

(a) The recipient of an award under this subpart may use funds under the award only to provide technical assistance (including training) in the preparation, adoption, and implementation of plans for race, sex, and/or national origin desegregation. This includes assistance in coping with educational problems resulting from that desegregation.

(b) The recipient may provide assistance under the award only if assistance is requested by a responsible governmental agency.

(c) The recipient may provide assistance under the award only to the following persons:

(1) Public school personnel; and

(2) Students enrolled in public schools, parents of those students, and other community members.

(d) The recipient shall coordinate the assistance that it provides under the award with assistance provided in its service area by any State educational agency funded under Subpart B of this part that provides the same type of assistance as the recipient. As part of this coordination, the recipient shall—

(1) Provide any such agency with access to the records described in § 270.39; and

(2) Develop plans to prevent duplication of assistance when a responsible governmental agency requests assistance from both the recipient and a State educational agency.

(42 U.S.C. 2000c-2)

§ 270.33 Authorized assistance.

(a) *Race desegregation.* (1) The recipient of an award to provide race desegregation assistance may provide assistance under the award only to a responsible governmental agency that is eligible under § 270.04

(2) The recipient may provide assistance under the award only to persons described in § 270.32(c) who are, or are reasonably likely to be, directly affected by the preparation, adoption, or implementation of a race desegregation plan or by problems that have resulted from the implementation of that plan.

(3) The recipient may provide assistance in coping with problems resulting from the implementation of a race desegregation plan adopted more than 5 years before the provision of assistance only when the Secretary determines in advance that the problems are unusually severe, and that the proposed assistance is likely to be effective. If funds available under the award do not permit the recipient to provide assistance to all eligible responsible governmental agencies that have requested authorized assistance, the recipient shall:

(i) First provide assistance in the preparation and adoption of race desegregation plans; and

(ii) Then give priority to assistance in coping with problems resulting from the implementation of a race desegregation plan adopted within the 3 years immediately preceding the provision of assistance.

(4) The recipient may provide technical assistance (including training) under the award only in the areas listed in § 270.13(d) and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of race desegregation plans and in coping with educational problems resulting from race desegregation. The recipient may not provide assistance in connection with the provision of compensatory education or the development of basic skills.

(b) *Sex desegregation.* The recipient of an award to provide sex desegregation assistance may provide technical assistance (including training) under the award only in the areas listed in § 270.14 and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of sex desegregation plans and in coping with educational problems resulting from sex desegregation.

(c) *National origin desegregation.* The recipient of an award to provide national origin desegregation assistance may provide technical assistance (including training) under the award only in the areas listed in § 270.15 and in other areas that the Secretary determines in advance will aid in the preparation, adoption, and implementation of national origin desegregation plans and in coping with educational problems resulting from national origin desegregation.

(42 U.S.C. 2000c-2)

[43 FR 32379, July 26, 1978; 43 FR 46020, Oct. 5, 1978]

§ 270.34 [Reserved]

§ 270.35 Criteria for awards—race desegregation.

In assessing the merits of an application to provide race desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Proposed assistance* (35 points). The extent to which (1) the applicant's approach to providing assistance in each of the areas listed in § 270.13(d) shows promise of success and its approach to providing assistance in coping with other educational problems resulting from race desegregation is designed to address those problems (30 points); and (2) the applicant demonstrates its familiarity with available technical assistance and training materials (5 points).

(b) *Staffing* (25 points). (1) The extent to which the project director, professional staff, and consultants who would be employed under the award have the experience and training needed to provide race desegregation assistance (20 points); and (2) whether these persons include members of the racial minority groups with respect to which assistance is likely to be requested (5 points).

(c) *Management* (35 points). The extent to which (1) the applicant's management plan shows promise of effective provision of assistance throughout its service area (15 points); (2) the applicant clearly defines the responsiblities of its professional staff and consultants (7 points); (3) the project director will exercise control over the provision of assistance (5 points); (4) the applicant provides for effective coordination with other related activities, including those of any State educational agency or training institute funded under this part to provide race desegregation assistance in its service area (4 points); and (5) the applicant provides for effective coordination with the sex and national origin desegregation assistance centers funded under this subpart to provide assistance in its service area (4 points).

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.36 Criteria for awards—sex desegregation.

In assessing the merits of an application to provide sex desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Proposed assistance* (35 points). The extent to which (1) the applicant's approach to providing assistance in each of the areas listed in § 270.14 shows promise of success and its approach to providing assistance in coping with other educational problems resulting from sex desegregation is designed to address those problems (30 points); and (2) the applicant demonstrates its familiarity with available technical assistance and training materials (5 points).

(b) *Staffing* (25 points). The extent to which the project director, professional staff, and consultants who would be employed under the award have the experience and training needed to provide sex desegregation assistance.

(c) *Management* (35 points). The extent to which (1) the applicant's management plan shows promise of effective provision of assistance throughout its service area (15 points); (2) the applicant clearly defines the responsibilities of its professional staff and consultants (7 points); (3) the project director will exercise control over the provision of assistance (5 points); (4) the applicant provides for effective coordination with other related activities, including those of any State educational agency or training institute funded under this part to provide sex desegregation assistance in its service area (4 points); and (5) the applicant provides for effective coordination with the race and national origin desegregation assistance centers funded under this subpart to provide assistance in its service area (4 points).

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.37 Criteria for awards—national origin desegregation.

In assessing the merits of an application to provide national origin desegregation assistance under this subpart, the Secretary applies the criteria in this section.

(a) *Proposed assistance* (35 points). The extent to which (1) the applicant's approach to providing assistance in each of the areas listed in § 270.15 shows promise of success and its approach to providing assistance in coping with other educational problems resulting from national origin desegregation is designed to address those problems (30 points); and (2) the applicant demonstrates its familiarity with available technical assistance and training materials (5 points).

(b) *Staffing* (25 points). (1) The extent to which the project director, professional staff, and consultants who would be employed under the award have the experience and training needed to provide national origin desegregation assistance (20 points); and (2) whether these persons include members of the national origin minority groups with respect to which assistance is likely to be requested (5 points).

(c) *Management* (35 points). The extent to which (1) the applicant's management plan shows promise of effective provision of assistance throughout its service area (15 points); (2) the applicant clearly defines the responsibilities of its professional staff and consultants (7 points); (3) the project director will exercise control over the provision of assistance (5 points); (4) the applicant provides for effective coordination with other related activities, including those of any State educational agency funded under this part to provide national origin desegregation assistance to responsible governmental agencies in its service area (4 points); and (5) the applicant provides for effective coordination with the race and sex desegregation assistance centers funded under this subpart to provide assistance in its service area (4 points).

(d) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-2)

§ 270.38 Funding procedures.

(a) *New awards.* The Secretary assesses the merits of applications to provide race, sex, and national origin desegregation assistance on the basis of the criteria in §§ 270.35, 270.36, and 270.37, respectively. On the basis of these assessments, the Secretary makes separate awards to provide race, sex, and national origin desegregation assistance.

(b) *Period of awards.* The Secretary makes an award under this subpart for a period of not more than 1 year. The Secretary may provide for the continuation of that award for up to 2 additional years.

(c) *Continuation awards.* The Secretary may approve the continuation of an award made under paragraph (a) of this section, if the recipient has complied with the terms of the award, has provided satisfactory assistance, and continues to show promise of success in providing that assistance.

(d) *Amount of award.* (1) The Secretary sets the amount of an award for a geographical service area on the basis of the magnitude of expected needs of responsible governmental agencies for race, sex, or national origin desegregation assistance (as applicable) in the service area, and the cost of providing assistance to meet those needs, compared with the magnitude of the expected needs for that assistance, and the cost of providing it, in all service areas. In setting the amount of an award to provide race desegregation assistance, the Secretary gives greatest weight to the expected needs of agencies that will require assistance in preparing race desegregation plans and of agencies that have recently adopted those plans.

(2) In assessing the magnitude of expected needs for race, sex, and national origin desegregation assistance, the Secretary considers the needs described in applications submitted under this subpart and such other information concerning those needs as may be relevant.

(42 U.S.C. 2000c-2)

§ 270.39 Records.

The recipient of an award under this subpart shall maintain a record of all requests for assistance it receives from responsible governmental agencies in its service area, and of the assistance provided in response to those requests.

(42 U.S.C. 2000c-2)

Subpart D—Race and Sex Desegregation Training Institutes

§ 270.51 Eligible applicants.

Any institution of higher education is eligible to submit an application under this subpart to operate a race desegregation training institute or a sex desegregation training institute or both.

(42 U.S.C. 2000c-3)

§ 270.52 Authorized training—race desegregation.

(a) The recipient of a grant to operate a race desegregation training institute may provide training under the grant only to the public school personnel of a responsible governmental agency—

(1) That is designated in the application; and

(2) That is eligible under § 270.04; and

(3) That, at the time the training commences, has adopted a race desegregation plan within the two immediately preceding years.

(b) The recipient may provide training under the grant only to public school personnel who are, or are reasonably likely to be, directly affected by the implementation of a race desegregation plan or by problems that have resulted from the implementation of such a plan.

(c) The recipient may provide training under the grant only in areas that will improve the ability of the participants to deal effectively with educational problems resulting from race desegregation. The recipient may not provide training in connection with the provision of compensatory education or the development of basic skills.

(42 U.S.C. 2000c-3)

§ 270.53 Authorized training—sex desegregation.

(a) The recipient of a grant to operate a sex desegregation training institute may provide training under the grant only to the public school personnel of a responsible governmental agency that is designated in the application.

(b) The recipient may provide training under the grant only in areas that will improve the ability of the participants to deal effectively with educational problems resulting from sex desegregation.

(42 U.S.C. 2000c-3)

§ 270.54 [Reserved]

§ 270.55 Criteria for awards—race desegregation.

In determining whether to make an award to operate a race desegregation training institute under this subpart, the Secretary applies the criteria in this section.

(a) *Needs assessment* (30 points). The magnitude of the needs of the proposed participants for training in methods of dealing effectively with educational problems resulting from race desegregation.

(b) *Proposed training* (40 points). The extent to which (1) the training that the applicant proposes to conduct is likely to meet the identified needs of the participants (30 points); (2) the applicant demonstrates its familiarity with available training materials (5 points); and (3) the training is likely to enable the participants to train other public school personnel to deal effectively with educational problems resulting from race desegregation (5 points).

(c) *Staffing* (25 points). (1) The extent to which personnel who would be employed under the grant have the experience and training needed to train public school personnel in dealing effectively with educational problems resulting from race desegregation (20 points); and (2) whether these persons include members of the racial minority groups with respect to which assistance is to be provided (5 points).

(d) *Resource management* (5 points). The extent to which costs of conducting the training are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-3)

§ 270.56 Criteria for awards—sex desegregation.

In determining whether to make an award to operate a sex desegregation training institute under this subpart, the Secretary applies the criteria in this section.

(a) *Needs assessment* (20 points). The magnitude of the needs of the proposed participants for training in methods of dealing effectively with educational problems resulting from sex desegregation.

(b) *Proposed training* (35 points). The extent to which (1) the training that the applicant proposes to conduct is likely to meet the identified needs of the participants (25 points); (2) the applicant demonstrates its familiarity with available training materials (5 points); and (3) the training is likely to enable the participants to train other public school personnel to deal effectively with educational problems resulting from sex desegregation (5 points).

(c) *Commitment to sex desegregation* (15 points). The extent to which the applicant shows that the responsible governmental agencies listed in the application have taken steps to eliminate discrimination on the basis of sex, sex bias, and sex role stereotypes from their schools.

(d) *Staffing* (25 points). The extent to which the personnel who would be employed under the grant have the experience and training needed to train public school personnel in dealing effectively with educational problems resulting from sex desegregation.

(e) *Resource management* (5 points). The extent to which costs of conducting the training are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-3)

§ 270.57 Funding procedures.

(a) *Awards.* The Secretary makes separate awards under this subpart to operate race desegregation and sex desegregation training institutes on the basis of the applicants' rankings on the criteria in §§ 270.55 and 270.56, respectively. However, the Secretary does not make an award to an applicant unless its application receives a score of at least 60 points on the basis of those criteria.

(42 U.S.C. 2000c-3)

[43 FR 32379, July 26, 1978; 43 FR 46020, Oct. 5, 1978, as amended at 45 FR 22540, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart E—Grants to School Boards for Sex Desegregation

§ 270.61 Eligible applicants.

Any school board is eligible to submit an application under this subpart.

(42 U.S.C. 2000c-4)

§ 270.62 Authorized assistance.

The recipient of a grant under this subpart may use funds received under the grant only to employ a specialist who advises on educational problems incident to sex desegregation or to provide public school personnel inservice training in dealing with those problems or both.

(42 U.S.C. 2000c-4)

§ 270.63 [Reserved]

§ 270.64 Criteria for awards.

In determining whether to make an award under this subpart, the Secretary applies the criteria in this section.

(a) *Needs assessment* (30 points). (1) The magnitude of the applicant's needs for the assistance available under this subpart in addressing educational problems incident to sex desegregation (20 points); and (2) the extent to which the applicant (i) lacks financial and other resources to address these problems (7 points); and (ii) has requested other sex desegregation assistance available under this part (3 points).

(b) *Project design* (25 points). The extent to which (1) the activities that the applicant proposes to undertake are designed to address the educational problems identified in the application, including the extent to which any specialist employed under the grant would have access to the superintendent and school board members (15 points); and (2) parents, students, and community groups have participated in developing the application (10 points).

(c) *Commitment to desegregation* (20 points). The extent to which the applicant demonstrates that (1) the proposed activities are part of a comprehensive, long-range plan for the sex desegregation of its schools (10 points); and (2) it has already taken steps to implement this plan (10 points).

(d) *Staffing* (20 points). The extent to which the personnel who would be employed under the grant have the experience and training needed to provide assistance in dealing with problems incident to sex desegregation.

(e) *Resource management* (5 points). The extent to which costs are reasonable in relation to expected benefits.

(42 U.S.C. 2000c-4)

§ 270.65 Funding procedures.

(a) *Awards.* The Secretary makes awards for assistance under this subpart on the basis of the applicants' rankings on the criteria in § 270.64. However, the Secretary does not make an award to an applicant unless its application receives a score of at least 60 points on the basis of those criteria.

(42 U.S.C. 2000c-4)

[43 FR 32379, July 26, 1978, as amended at 45 FR 22540, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart F—Special Grants to School Boards for Race and National Origin Desegregation

§ 270.71 Eligible applicants.

(a) *Race desegregation.* Any school board or combination of school boards that is eligible under § 270.04 is eligible to submit an application under this subpart for race desegregation assistance.

(b) *National origin desegregation.* Any school board is eligible to submit an application under this subpart for national origin desegregation assistance.

(42 U.S.C. 2000c-4)

§ 270.72 Authorized activities.

(a) A school board may use funds received under the grant only to pay, in whole or in part, the cost of:

(1) Employing one or more specialists to advise in the school board's preparation, adoption, or implementation of a plan for race or national origin desegregation (as applicable) or in dealing with problems incident to that desegregation; and

(2) Providing public school personnel inservice training in dealing with problems incident to that desegregation.

(b) A school board may not use funds under a grant for race desegregation assistance in connection with the provision of compensatory education or the development of basic skills.

(42 U.S.C. 2000c-4)

§ 270.73 Applications.

(a) A school board may submit an application for a grant under this subpart at any time.

(b) The applicant shall include in its application the following information:

(1) A description of the problems incident to desegregation that the applicant would address with the assistance;

(2) A statement of the financial and other resources that the applicant could use to address those problems and the extent to which it has requested and received other race or national origin desegregation assistance (as applicable) available under this part;

(3) [Reserved]

(4) A detailed description of the relationship between the proposed activities and problems incident to desegregation to which those activities are addressed.

(42 U.S.C. 2000c-4)

[43 FR 32379, July 26, 1978, as amended at 45 FR 22540, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 270.74 Funding procedures.

(a) The Secretary may make a grant under this subpart at any time.

(b) In determining whether to make a grant under this subpart, and in fixing the amount of such a grant and the terms and conditions on which it will be made, the Secretary considers the following factors:

(1) The amount of funds available for grants under this subpart;

(2) Other applications for grants under this subpart that have been, or are likely to be, submitted;

(3) The availability of other financial resources with which the applicant could undertake the proposed activities;

(4) The nature, extent, recency, and gravity of the problems incident to desegregation to which the proposed activities are addressed, including the extent to which those problems are directly related to desegregation; and

(5) The extent to which the proposed activities would assist the applicant in solving those problems.

(42 U.S.C. 2000c-4)

PART 280—EMERGENCY SCHOOL AID

Subpart A—General Matters

Sec.

280.1 Emergency School Aid.
280.2 Eligibility.
280.3 Other applicable regulations.
280.4 Definitions.

Subpart B—Requirements for Local Educational Agencies

Sec.

280.10 Public and advisory committee participation.
280.11 State educational agency review.
280.12 Additional cost.
280.13 Supplementing non-Federal funds.
280.14 Coordination of Federal funds.
280.15 Services to educationally deprived children.
280.16 Evaluation.
280.17 Private school participation.
280.18 Freedom of choice desegregation plans.
280.19 Compliance with plan.
280.20 Maintenance of effort.
280.21 Limitation on eligibility—transfers to discriminatory nonpublic schools.
280.22 Limitation on eligibility—prohibited personnel practices.
280.23 Limitation on eligibility—classroom segregation.
280.24 Limitation on eligibility—discrimination among children.
280.25 Exception for planning grants.
280.26 Continuing conditions of eligibility.
280.27 Show cause conferences.
280.28 Waivers of ineligibility.
280.29 Waiver of ineligibility—transfers to discriminatory nonpublic schools.
280.30 Waiver of ineligibility—prohibited personnel practices.
280.31 Waiver of ineligibility—classroom segregation.
280.32 Waiver of ineligibility—discrimination among children.

Subpart C—Basic Grants

280.40 Purpose.
280.41 Eligible applicants.
280.42 Qualifying plans.
280.43 Authorized activities.
280.44 Application procedures.
280.45 Approval of new projects.
280.46 Length of project.
280.47 Approval of continuation awards.

Subpart D—Special Project Grants

PLANNING GRANTS

280.50 Purpose.
280.51 Eligible applicants.
280.52 Authorized activities.
280.53 Application procedures.
280.54 Approval of projects.

TRANSITIONAL GRANTS

280.60 Purposes.
280.61 Eligible applicants.
280.62 Authorized activities.
280.63 Application procedures.
280.64 Approval of projects.

GRANTS FOR THE ARTS

Sec.
280.70 Purpose.
280.71 Eligible applicants.
280.72 Eligibility for services from a grantee.
280.73 Authorized activities.
280.74 Application procedures.
280.75 Approval of projects.

METROPOLITAN AREA GRANTS

280.80 Purposes.
280.81 Eligible applicants.
280.82 Authorized activities.
280.83 Application procedures.
280.84 Approval of new projects.
280.85 Length of project.
280.86 Approval of continuation awards.

OTHER SPECIAL PROJECTS

280.90 Use of discretionary funds.
280.91 Applicable requirements.

Subpart E—Magnet School, University/Business Cooperation and Neutral Site Planning Grants

280.100 Purposes.
280.101 Eligible applicants.
280.102 Authorized activities.
280.103 Application procedures.
280.104 Approval of new projects—magnet schools and university/business cooperation.
280.105 Approval of new projects—neutral site planning.
280.106 Length of project.
280.107 Approval of continuation awards.

Subpart F—Compensatory Service Grants

280.110 Purpose.
280.111 Definitions.
280.112 Eligible applicants.
280.113 Authorized activities.
280.114 Application procedures.
280.115 Funding procedures.

Subpart G—Nonprofit Organization Grants

280.120 Purpose.
280.121 Eligible applicants.
280.122 Authorized activities.
280.123 Application procedures.
280.124 Approval of new projects.
280.125 Selection criteria.
280.126 Selection criterion: Recency of qualifying plan (3 points).
280.127 Selection criterion: Need (20 points).
280.128 Selection criterion: Project design (40 points).
280.129 Selection criterion: Organizational experience (10 points).
Sec.
280.130 Selection criterion: Personnel (15 points).
280.131 Selection criterion: Evaluation plan (5 points).
280.132 Selection criterion: Budget (7 points).
280.133 Selection criterion: Commitment to plan adoption (10 points).

Subpart H—State Agency Grants

280.140 Purpose.
280.141 Eligible applicants.
280.142 Authorized activities.
280.143 Application procedures.
280.144 Approval of projects.

Subpart I—Television and Radio Contracts

280.150 Purpose.
280.151 Eligible offerors.
280.152 Authorized activities.
280.153 Proposal procedures.
280.154 Selection of contractors.
280.155 Requirements for offerors.

AUTHORITY: Title VI of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561; 92 Stat. 2252 (20 U.S.C. 3191 *et seq*), unless otherwise noted.

SOURCE: 45 FR 32591, May 16, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General Matters

§ 280.1 Emergency School Aid.

(a) *Scope.* The regulations in this part govern awards under the Emergency School Aid Act.

(Secs. 601-617; 20 U.S.C. 3191-3207)

(b) *Purpose.* The purpose of the Emergency School Aid Act is to provide financial assistance—

(1) To meet the special needs incident to the elimination of minority group segregation and dicrimination among students and faculty in elementary and secondary schools; and

(2) To encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students.

(Sec. 602(b); 20 U.S.C. 3192(b))

§ 280.2 Eligibility.

Eligible applicants for each type of award under this part are set out in the regulations that pertain to that type of award.

(Sec 601-617; 20 U.S.C. 3191-3207)

§ 280.3 Other applicable regulations.

(a) Awards under this part are subject to applicable provisions of the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) However, the provisions of the EDGAR set out below do not apply to the types of awards described.

(1) The provisions in 34 CFR 75.200 through 75.220, except for 34 CFR 75.216, 75.217(a), 75.218, and 75.219(b) and (c), do not apply to any award under this part. The provisions of 34 CFR 75.217(a)(2) through (5) apply only to original applications for awards under Subpart C-Basic Grants and Subpart G-Nonprofit Organization Grants. These inapplicable provisions relate to the selection of projects.

(2) The provisions in 34 CFR 75.250(a), relating to the length of a project period, do not apply to any award under this part except for—

(i) Grants for the Arts, described in Subpart D; and

(ii) Grants to jurisdiction set out in § 280.90(b).

(3) The following provisions do not apply to any award to a local educational agency under this part—

(i) 34 CFR 75.253 relating to the criteria for a continuation grant;

(ii) 34 CFR 75.560 through 75.568, relating to indirect cost rates; and

(iii) 34 CFR 75.650, relating to the participation of children enrolled in private schools.

(4) The provisions in 34 CFR 75.100 through 75.102, and 75.109(b), relating to deadline dates for applications, do not apply to Planning Grants and Transitional Grants described in Subpart D.

(5) Any other provision of EDGAR that conflicts with any provision of this part does not apply to the matters treated in this part.

(Sec. 601-617; 20 U.S.C. 3191-3207; 20 U.S.C. 1221e-3(a)(1))

§ 280.4 Definitions.

(a) The definitions of the following terms, taken from Section 617 of the Emergency School Aid Act, apply to those terms as used in this part.

(1) "Equipment" means machinery, utilities and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

(2) "Institution of higher education" means an educational institution in any State which—

(i) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(ii) Is legally authorized within a State to provide a program of education beyond high school;

(iii) Provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary for the purpose of this subparagraph.

(3) "Integrated school", for purposes of Sections 606(a)(2) and 609(a)(1) of the Act, means a school with an enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds, in which the proportion of minority group children is at least 50 percent of the proportion of minority group children enrolled in all schools of the local educational agencies within the Stand-

ard Metropolitan Statistical Area, and which has a faculty and administrative staff with a substantial representation of minority group persons.

(4) "Local educational agency" (LEA) means—

(i) A public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation;

(ii) A combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary or secondary schools;

(iii) A combination of local educational agencies;

(iv) Any other public institution or agency having administrative control and direction of a public elementary or secondary school; and

(v) At the Secretary's discretion, an agency subordinate to such a board or other authority, where responsibility for the control and direction of the activities in schools which are to be assisted under the Act is vested in the subordinate agency.

(5) "Magnet school" means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

(6) "Minority group" means—

(i) American Indians;

(ii) Alaskan Natives;

(iii) Asians;

(iv) Pacific Islanders;

(v) Blacks, not of Hispanic origin;

(vi) Hispanics;

(vii) Franco-Americans;

(viii) Portuguese; and

(ix) Except for purposes of Section 605 of the Act, as determined by the Secretary, persons who are from environments in which the dominant language is other than English and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity.

(7) "Minority group isolated school" and "minority group isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 percent of the enrollment of a school.

(8) "Neutral site school" means a school that is located so as to be accessible to substantial numbers of students of different racial backgrounds.

(9) "Standard Metropolitan Statistical Area" (SMSA) means the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget.

(10) "State" means one of the fifty States or the District of Columbia and, for purposes of Section 608(a) and (b) of the Act, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Sec. 617; 20 U.S.C. 3207; 20 U.S.C. 3507)

(b) The definitions of the following terms, taken from Section 1001 of the Elementary and Secondary Education Act of 1965, as amended, apply to those terms as used in this part.

(1) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(2) "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(3) "Secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(4) "Secretary" means the Secretary of Education.

(5) "State educational agency" (SEA) means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. (ESEA, Section 1001; 20 U.S.C. 3381; 20 U.S.C. 3507)

(c) The definitions of terms in 34 CFR Part 77 apply to those terms as used in this part, except where a term is defined differently under this part.

(d) "The Act" means the Emergency School Aid Act (Title VI of the Elementary and Secondary Education Act of 1965, as amended).

(e) "Desegregation," in reference to a plan, means the reassignment of children or faculty required by a court, agency, or official to remedy the illegal separation of minority group children or faculty in the schools of an LEA.

(Secs. 606(a)(1)(A), 606(c)(1)(A)-(C), 607(a)(10) and (11), 610(a)(5); 20 U.S.C. 3196(a)(1)(A), 3196(c)(1)(A)-(C), 3197(a)(10) and (11), 3200(a)(5); H.R. Rep. No. 576, 92nd Cong., 1st Sess. 3, 12 (1971); S. Rep. No. 61, 92nd Cong., 1st Sess. 6, 35 (1971); 42 FR 12085 (March 2, 1977))

Subpart B—Requirements for Local Educational Agencies

§ 280.10 Public and advisory committee participation.

(a) An LEA shall develop any application for assistance in open consultation with parents, teachers, and, if the LEA operates a secondary school, secondary school students. At a minimum, the LEA shall—

(1) Meet the open meeting requirements of 34 CFR 75.139 through 75.141; and

(2) Consult with an advisory committee composed of parents of children enrolled in the LEA's schools, teachers, and, if the LEA operates a secondary school, secondary school students. At least half the members of the advisory committee must be parents. Also, at least half the members of the committee must be members of minority groups.

(b) The Secretary does not approve an application without having received the written comments of a majority of the members of the advisory committee concerning the application. If a majority of the committee requests an informal hearing concerning the application, the Secretary does not approve the application without first affording the committee an opportunity for such a hearing.

(c) If the LEA receives an award, it shall periodically consult with the advisory committee, parents of children enrolled in its schools, and representatives of the area served regarding the services under the award.

(Sec. 610(a)(1) and (2), 610(c); 20 U.S.C. 3200(a)(1) and (2), 3200(c))

§ 280.11 State educational agency review.

(a) An LEA that applies for assistance shall give the appropriate SEA a reasonable opportunity to offer recommendations to the LEA on the LEA's application.

(b) The LEA shall give the SEA a reasonable opportunity to submit comments to the Secretary on the LEA's application, in accordance with 34 CFR 75.156 through 75.159.

(Sec. 610(a)(10); 20 U.S.C. 3200(a)(10))

§ 280.12 Additional cost.

(a) An LEA may include in its application for an award of assistance under the Act only activities that are authorized by the Act and are not normally carried out by the LEA.

(b) An LEA may not include an activity in its application if—

(1) The LEA supported the activity with funds from a source other than a Federal program of assistance in the fiscal year just prior to the fiscal year for which it seeks assistance under the Act for the activity; and

(2) Funds from sources other than a Federal program of assistance are available to support the activity, or would have been available for that purpose in the absence of action by the LEA.

(c) The LEA shall use funds it receives under the Act solely to pay its additional cost in carrying out the authorized activities included in its application.

(d) For the purpose of this section, "additional cost" means the actual, incremental cost of an activity. The term does not include any cost that is not related solely to that activity.

(e) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Secs. 606(b), 610(a)(3); 20 U.S.C. 3196(b), 3200(a)(3))

§ 280.13 Supplementing non-Federal funds.

(a) An LEA that applies for assistance under the Act shall use funds it receives under the Act to supplement the level of funds—and in no case supplant funds—that would, in the absence of those funds, be made available from non-Federal sources for—

(1) The purposes of the project for which the LEA seeks assistance;

(2) Promoting the integration of the LEA's schools; and

(3) The education of children participating in the project.

(b) However, this section does not prohibit the use of funds under the Act for an otherwise authorized activity required under a court-ordered plan described in § 280.42(a)(1).

(c) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Sec. 610(a)(7); 20 U.S.C. 3200(a)(7))

§ 280.14 Coordination of Federal funds.

(a) An LEA that applies for assistance under the Act shall coordinate the use of funds it receives under any other law of the United States with funds it receives under the Act to the extent consistent with that other law.

(b) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Sec. 610(a)(7)(B); 20 U.S.C. 3200(a)(7)(B))

§ 280.15 Services to educationally deprived children.

An LEA that applies for assistance shall include in its application an assurance that, in developing its proposed project, it considered the need for compensatory services for children who—

(a) Received those services under Title I of the Elementary and Secondary Education Act of 1965, as amended, and

(b) Are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan (described in § 280.42).

(Sec. 610(a)(13); 20 U.S.C. 3200(a)(13))

§ 280.16 Evaluation.

(a) An LEA that receives assistance shall evaluate its approved project on a continuing basis to determine at least the following:

(1) The effectiveness of the project in achieving its goals;

(2) The impact of the project on related programs and on the community served; and

(3) The effectiveness of the project's structure and its means for the delivery of services.

(b) The LEA's evaluation must include an objective measurement of change that the LEA proposes to effect under the project. If the LEA proposes to effect a change in educational achievement, its evaluation must include an objective measurement of that change.

(c) The LEA shall include in its application effective procedures for the evaluation described in this section. These procedures may include comparisons with proper control groups composed of persons who have not participated in the project, where appropriate.

(Sec. 610(a)(11); 20 U.S.C. 3200(a)(11))

§ 280.17 Private school participation.

(a) (1) An LEA that applies for assistance under the Act shall provide children enrolled in private nonprofit schools, and teachers and other educational staff employed in those schools, an opportunity to participate in its project on an equitable basis in accordance with this section.

(2) However, the Secretary waives the requirement in this paragraph if the LEA is prohibited by law from meeting it through reasonably feasible provisions.

(3) If the Secretary waives the requirement in this paragraph for an LEA, and if that LEA's application for assistance under the Act is approved, the Secretary arranges for any appropriate services to private school children and staff in accordance with Section 612(c)(1) and (2) of the Act.

(b) (1) In meeting the requirement in subsection (a), the LEA shall comply with the requirements of 34 CFR 76.651 through 76.662 for subgrantees.

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of 34 CFR Part 76 mean "LEA" and "award", respectively. In addition, the term "students" and "children" as used in those sections of 34 CFR Part 76 include, for the purpose of this section, teachers and other educational staff.

(c) The requirement in paragraph (a) of this section relates only to a private nonprofit elementary or secondary school—

(1) That is located within the school district of the LEA; and

(2) That is found by the LEA to meet the requirements of § 280.21 (relating to nondiscrimination).

(d) A private school child, teacher, or other educational staff member may participate in the LEA's project only if his or her participation would assist in achieving the purposes of the Act (set out in § 280.1(b). In meeting the requirements of 34 CFR 76.656 the applicant shall include a description of how the participation of private school children, teachers, and other educational staff would assist in achieving those purposes.

(Sec. 610(a)(8), 612(c); 20 U.S.C. 3200(a)(8), 3202(c))

§ 280.18 Freedom of choice desegregation plans.

(a) If an LEA seeks assistance with respect to a desegregation plan described in § 280.42(a), it shall identify in its application any elements of the plan that permit a child to select the school which he or she will attend.

(b) The Secretary does not approve an application for assistance with respect to a desegregation plan that uses these elements unless he or she determines that the plan provides for the complete elimination of the LEA's dual school system.

(Sec. 610(a)(5); 20 U.S.C. 3200(a)(5))

§ 280.19 Compliance with plan.

If an LEA's eligibility for assistance is based on a plan described in Section 606 of the Act, it shall include in its application an assurance that it will carry out, and comply with, all provisions, terms, and conditions of that plan.

(Sec. 610(a)(6); 20 U.S.C. 3200(a)(6))

§ 280.20 Maintenance of effort.

(a) An LEA that applies for assistance under the Act shall meet at least one of the following requirements:

(1) Its fiscal effort per student for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year; or

(2) Its aggregate expenditure for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year.

(b) (1) For the purposes of this section, "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, (excluding costs relating solely to length of service), attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students in average daily attendance at the applicant's schools during the fiscal year for which the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(2) "Aggregate expenditure" means the total expenditures used to compute "fiscal effort per student", as described in paragraph (b)(1) of this section.

(c) The LEA shall include in its application evidence that it meets the requirement of this section.

(Sec. 610(a)(9); 20 U.S.C. 3200(a)(9); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 232 (1976); 122 CONG. REC. H4209 (daily ed. May 11, 1976))

§ 280.21 Limitation on eligibility—transfers to discriminatory nonpublic schools.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has transferred—directly or indirectly by gift, lease, loan, sale, or any other means—any real or personal property, or made available any services to, a nonpublic school or school system, or any organization controlling, operating, or intending to establish a nonpublic school or school system, before determining that the school or school system—

(1) Is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated public schools; and

(2) Does not otherwise practice, or permit to be practiced—in admissions or in the operation of any other school activity—discrimination on the basis of race, color, or national origin.

(b) (1) In order to determine whether a transferee under paragraph (a) of this section is a nonpublic school or school system—or an organization controlling, operating, or intending to establish a nonpublic school or school system—the applicant shall, at a minimum, obtain from the transferee, in writing, the following information:

(i) (A) The legal name and address of the transferee; and

(B) If the immediate transferee is acting in a representative capacity, the legal name and address of the party represented.

(ii) If the information in paragraph (b)(1)(i) of this section does not clearly indicate the nature of the transferee or the party represented, a copy of the articles of incorporation, charter, bylaws, or other documents indicating the legal status and stated purposes of the transferee or the party represented.

(iii) A statement of the use to be made of the property or services to be transferred.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973 (the date on which the regulations relating to this matter first became effective), the requirements in paragraph (b)(1) of this section do not apply.

(c) (1) In making the prior determination required under paragraph (a) of this section as to the nature and practices of a nonpublic school or school system, an LEA shall, at a minimum, obtain from that school or school system, in writing, the following information:

(i) Whether the school has publicized a policy of nondiscrimination in admissions, educational policies, scholarship programs, athletics, and extracurricular activities.

(ii) Whether the school has publicized this policy in a manner intended and reasonably likely to bring it to the attention of school-age minority group persons, and their families, without making other statements or taking actions that negate the effect of that publicity.

(iii) Whether applicants for admission and employment have been treated on a nondiscriminatory basis.

(iv) Whether scholarship assistance is made available without regard to race.

(v) Whether students and scholarship recipients are recruited among all segments of the community.

(vi) Whether the school's incorporators, founders, board members, or donors of its land and buildings——

(A) Are announced or generally known as having as a primary objective the maintenance of segregated education; or

(B) Are announced or identified as officers or active members of an organization with that objective.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973, a determination required to be made by paragraph (a) of this section shall be substantiated by credible evidence satisfactory to the Secretary.

(d) The fact that an LEA may have obtained an assurance or statement of nondiscrimination from a transferee)or included that assurance or statement in the transfer documents—does not excuse the LEA from making the determination required by paragraph (a) of this section.

(Sec. 606(c)(1)(A); 20 U.S.C. 3196(c)(1)(A); Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd *sub nom.* Coit v. Green, 404 U.S. 997(1971); Wright v. City of Brighton, Alabama 441 F.2d 447 (5th Cir. 1971), cert. den. 404 U.S. 915 (1971))

§ 280.22 Limitation on eligibility—prohibited personnel practices.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had in effect any practice, policy, or procedure that results in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in Section 606 of the Act.

(b) (1) For the purpose of paragraph (a) of this section, a disproportionate demotion or dismissal of minority group personnel has occurred if the ratio of minority group elementary school teachers, secondary school teachers, principals, or other staff demoted or dismissed to the number of minority group personnel employed by the agency before those demotions or dismissals exceeds by more than 10 percentage points the ratio of nonminority group personnel demoted or dismissed over the same period of time to the number of nonminority group personnel employed by the agency prior to those demotions or dismissals. For example, the agency would be in violation of paragraph (a) of this section if it has demoted or dismissed 21 percent of its minority group principals and 10 percent of its nonminority group principals over the same period of time.

(2) For purposes of this section, a demotion includes any reassignment—

(i) Under which a faculty or staff member receives less pay or has less responsibility than under the assignment he or she held prior to the assignment;

(ii) That requires a lesser degree of skill than did the assignment he or she held previously; or

(iii) Under which he or she is required to teach in a subject or grade other than one for which he or she is certified or in which he or she has substantial experience or qualifications.

(3) For the purpose of this section, a dismissal includes any termination of or failure to renew a contract, for cause or otherwise, including resignations forced by threatened administrative or other sanctions.

(c) (1) The Secretary considers a practice, policy, or procedure that resulted in the disproportionate demotion or dismissal of minority group personnel on or before June 23, 1972, to be in effect after that date if—at the time the LEA applies for assistance under the Act—the proportion of minority group personnel affected has not been restored at least to the proportion that existed just prior to the disproportionate demotions or dismissals.

(2) However, the Secretary does not make this finding if the LEA submits with its application information establishing that this practice, policy, or procedure has not been in effect since June 23, 1972. This information must include a description of corrective measures taken and progress achieved in eliminating the results of this practice, policy, or procedure.

(d) No LEA is eligible for assistance under the Act if—

(1) After June 23, 1972, the LEA, in selecting a staff member for demotion and dismissal, did not apply objective, nonracial, reasonable, and nondiscriminatory criteria to all staff members; or

(2) (i) The LEA selected a staff member for demotion or dismissal on or before June 23, 1972, as described in paragraph (d)(1) of this section; and

(ii) At the time the LEA applies for assistance under the Act, the LEA has not offered this staff member reinstatement to his or her former position—or a comparable position—and offered him or her financial compensation for any loss caused by the demotion or dismissal; or

(3) The LEA fills a staff vacancy occurring after a demotion or dismissal in the process of desegregation with a person of a race, color, or national origin different from a qualified former staff member who was demoted or dismissed, unless this former staff member was offered employment in the vacancy and failed to accept the offer.

(e) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had in effect any other practice, policy, or procedure that results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, or assignment of any of its employees or other personnel for which the LEA has any administrative responsibility. This includes the assignment of full-time classroom teachers to the schools of the LEA in a manner that identifies any of those schools as intended for students of a particular race, color, or national origin.

(Sec. 606(c)(1)(B); 20 U.S.C. 3196(c)(1)(B); S. Rep. No. 61, 92nd Cong., 1st Sess. 19 (1971), Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir. 1969))

§ 280.23 Limitation on eligibility—classroom segregation.

(a) Except as provided in § 280.25, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had in effect any procedure for the assignment of children to or within classes—in conjunction with desegregation or the conduct of any activity described in Section 606 of the Act—that results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods.

(b) However, paragraph (a) of this section does not prohibit, as a standard pedagogical practice, ability grouping that is—

(1) Based on nondiscriminatory, objective standards of measurement that—

(i) Are educationally relevant to the purposes of the grouping; and

(ii) In the case of national origin minority group children other than those in groupings designed to enable them to achieve competence in the English language, do not essentially measure English language skills;

(2) (i) Determined by the nondiscriminatory application of the standards described in paragraph (b)(1) of this section; and

(ii) Maintained for only that portion of the school day classroom periods necessary to achieve the purposes of the grouping;

(3) Designed to meet the special needs of the students in each group, and in the case of students in less academically advanced groups, to bring their academic achievement to or above the appropriate grade level; and

(4) Validated by test scores or other reliable, objective evidence indicating the educational benefits of the grouping.

(Sec. 606(c)(1)(C); 20 U.S.C. 3196(c)(1)(C); S. Rep. No. 61, 92nd Cong., 1st Sess., 19 (1971))

§ 280.24 Limitation on eligibility—discrimination among children.

Except as provided in § 280.25, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had in effect any practice, policy or procedure that discriminates among children on the basis of race, color, or national origin, including but not limited to—

(a) Limiting curricular or extracurricular activities or participation of children in those activities, to avoid the participation of minority group children;

(b) Denying equality of educational opportunity to, or otherwise discriminating on the basis of language or cultural background against, national origin minority group children;

(c) Permitting the rental, use, or enjoyment of any of the LEA's facilities or services by a group or organization that—

(1) Discriminates against minority group children aged 5 through 17 in its admissions or membership policies; or

(2) Otherwise practices, or permits to be practiced, discrimination against these children on the basis of race, color, or national origin;

(d) Imposing disciplinary sanctions—including expulsion, suspension, or corporal or other punishment—in a manner that discriminates against minority group children on the basis of race, color, or national origin;

(e) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally under the criteria set out in § 280.23(b) are presumed by the Secretary to be assigned on the basis of race, color, or national origin; and

(f) Denying to minority group children, on the basis of race, color, or national origin, facilities or instructional or other services comparable to those provided to nonminority group children.

(Sec. 606(c)(1)(D); 20 U.S.C. 3196(c)(1)(D))

§ 280.25 Exception for planning grants.

The provisions of §§ 280.23 and 280.24 do not apply to an LEA described in § 280.51, if the applicant LEA provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections by providing for their cessation upon the implementation of the plan.

(Sec. 606(c)(2), 20 U.S.C. 3196(c)(2))

§ 280.26 Continuing conditions of eligibility.

(a) The limitations on eligibility in §§ 280.21 through 280.24 are continuing conditions of eligibility during the entire grant period.

(b) The LEA's failure to comply with these conditions after the award of assistance is grounds for termination of assistance and for other sanctions that the Secretary may impose.

(Sec. 606(c); 20 U.S.C. 3196(c); S. Rep. No. 61, 92nd Cong., 1st Sess. 41-42 (1971))

§ 280.27 Show cause conferences.

(a) (1) If the Secretary determines that an applicant is not eligible for assistance under §§ 280.21 through 280.24, the Secretary notifies the applicant in writing of that determination and the reasons for it.

(2) The notification includes an offer to show cause why the determination of ineligibility should be revoked and the applicant's application considered for funding.

(b) If the applicant requests an opportunity to show cause, the Secretary holds an informal conference for that purpose.

(c) After the conference has been held, the Secretary promptly notifies the applicant of the decision to continue or revoke the determination of ineligibility and the reasons for that decision.

(d) For the purpose of this section, "applicant" includes—

(1) An agency that is seeking an award for a new project; and

(2) An agency that is seeking a continuation award for a budget period after the first budget period of an approved multi-year project.

(e) The provisions of 34 CFR Part 78 (Education Appeal Board) do not apply to a determination that an applicant seeking an award is not eligible for assistance under §§ 280.21 through 280.24.

(Sec. 606(c); 20 U.S.C. 3169(c))

§ 280.28 Waivers of ineligibility.

(a) In the event that an applicant LEA is determined to be ineligible under §§ 280.21 through 280.24, it may apply to the Secretary for waiver of ineligibility.

(Sec. 606(c)(1) and (3); 20 U.S.C. 3196(c)(1) and (3))

(b) An application for waiver under paragraph (a) of this section must contain—

(1) A statement of the reason for the LEA's ineligibility;

(2) Information and assurances to ensure that any practice, policy, procedure, or other activity resulting in ineligibility has ceased to exist or occur; and

(3) Provisions to ensure that the practice, policy, procedure, or activity will not reoccur after the agency submits its application for a waiver.

(c) The requirements in paragraph (b) of this section apply to any application for waiver. Particular requirements for applications for waivers of certain findings of ineligibility are set out in §§ 280.29 through 280.32.

(d) If an applicant for assistance—except for assistance under Section 608(a) of the Act—submits its application for waiver too late to permit the Secretary to consider it before the June 30 deadline in Section 610(b) of the Act, the Secretary disapproves the applicant's application for assistance.

(Secs. 606(c)(1) and (3), 610(a) and (b); 20 U.S.C. 3196(c)(1) and (3), 3200(a) and (b))

§ 280.29 Waiver of ineligibility—transfers to discriminatory nonpublic schools.

In the case of ineligibility under § 280.21, an LEA shall include the following in its application for waiver:

(a) A list of all property transferred or services made available to nonpublic schools or school systems that—

(1) Are operated on a raciallly segregated basis; or

(2) Practice, or permit to be practiced, discrimination on the basis of race, color or national origin in admissions or the operation of any other school activity.

(b) The names and addresses of these schools or school systems.

(c) The consideration received for these transfers.

(d) Evidence that—(1) The transfers have been rescinded; and

(2) To the extent possible under State law, all unearned consideration received for them has been repaid or returned.

(e) A statement of steps taken by the agency to avoid or prevent these types of transfers in the future.

(Sec. 606(c); 20 U.S.C. 3196(c))

§ 280.30 Waiver of ineligibility—prohibited personnel practices.

(a) In the case of ineligibility under § 280.22 resulting from the disproportionate demotion or dismissal of instructional or other personnel from minority groups, an LEA shall include the following in its application for waiver:

(1) A plan of affirmative action to ensure that—within a reasonable time from the date of its application—the proportion of minority group personnel affected by these demotions or dismissals will be restored to the proportion that existed prior to the demotions or dismissals.

(2) A statement of steps taken by the LEA to prevent any future disproportionate demotion or dismissal of minority group personnel.

(b) In the case of ineligibility under § 280.22 resulting from discriminatory demotion or dismissal of staff members, an LEA shall include the following in its application for waiver:

(1) Evidence that all staff members demoted or dismissed as a result of discrimination have been offered reinstatement to their former positions or comparable positions and afforded financial compensation for any loss caused by those demotions or dismissals.

(2) A statement of steps taken by the LEA to prevent any future discriminatory demotion or dismissal of personnel. This includes but is not limited to a statement of objective, nonracial, and reasonable criteria to be applied—

(i) In the event that reinstatement of staff members as required by paragraph (b)(1) of this section necessitates a reduction in the number of staff members; or

(ii) In the event of future demotions or dismissals for any reason.

(c) (1) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by § 280.22(e), an LEA shall include in its application for waiver evidence that the agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin.

(2) In the case of an LEA implementing a required plan described in § 280.42(a), these nondiscriminatory assignments must conform to the requirements of that plan.

(3) In the case of an LEA not implementing that type of plan, or implementing a plan that contains no provision regarding assignment of faculty, the LEA shall make assignments so that the proportion of minority group full-time classroom teachers at each school is between 75 and 125 percent of the proportion of those teachers that exists on the LEA's faculty as a whole.

(d) In the case of ineligibility resulting from other discriminatory practices, policies, or procedures prohibited by § 280.22(e), an LEA shall include the following in its application for waiver:

(1) Evidence that personnel subjected to this type of discrimination have been—

(i) Reinstated or restored to the positions or status they held prior to, or would have held in the absence of, this discrimination; and

(ii) Given financial compensation for any loss caused by that discrimination.

(2) A statement of steps taken by the LEA to prevent this type of discrimination in the future.

(Sec. 606(c); 20 U.S.C. 3196(c))

§ 280.31 Waiver of ineligibility—classroom segregation.

In the case of ineligibility under § 280.23, an LEA shall include in its application for waiver—

(a) Evidence that minority group children are not separated from nonminority group children by or within classes for more than 25 percent of the school day classroom periods, except in the case of ability grouping that meets the requirements of § 280.23(b)(1) through (3) and is the only available method of achieving a specific educational objective; and

(b) A statement of steps taken by the LEA to ensure that separation of minority and nonminority group children as prohibited by § 280.23 will not reoccur.

(Sec. 606(c); 20 U.S.C. 3196(c))

§ 280.32 Waiver of ineligibility—discrimination among children.

(a) In the case of a denial of equal educational opportunity to national origin minority group children—as described in § 280.24(b)—the LEA shall submit an educational plan of sufficient comprehensiveness to remedy or eliminate the effects of the denial and to meet the special educational needs of all national origin minority group children for whose education the LEA is responsible.

(b) In the case of a violation under § 280.24(c), the LEA shall include in its application for waiver evidence that—

(1) The discriminatory rental, use, or enjoyment of its facilities is no longer permitted; and

(2) Any agreement with respect to the discriminatory rental, use, or enjoyment has been rescinded and the unearned consideration from it has been returned or repaid, to the extent possible under the applicable State law.

(c)(1) In the case of the assignment of students to racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally—as described in § 280.24(e)—The LEA shall include in its application for waiver the following information:

(i) If the assignment was to a grouping to provide special education or related services to handicapped students, evidence that the students have been evaluated and placed in accordance with requirements for evaluation and placement of handicapped students under Pub. L. 94-142, Section 504 of Pub. L. 93-112, and any regulations under those statutes.

(ii) If the assignment was to other groupings, evidence that the students have been reassigned without discrimination to groupings that are not racially or ethnically identifiable, or evidence that the students have been reassigned to groupings in accordance with the criteria in § 280.23(b)(1) through (3).

(2) If the agency reassigns any student to a new grouping under paragraph (c)(1) of this section, it shall also include evidence that it has made provision for the transitional services necessary to enable the student to participate meaningfully in the educational program of the new grouping.

(Sec. 606(c); 20 U.S.C. 3196(c))

Subpart C—Basic Grants

§ 280.40 Purpose.

The purpose of a basic grant is to meet educational needs that arise from a qualifying plan described in § 280.42.

(Sec. 602(b), 604(b)(1), 606(a)(1), 607(a); 20 U.S.C. 3192(b), 3194(b)(1), 3196(a)(1), 3197(a))

§ 280.41 Eligible applicants.

An LEA may apply for a basic grant.

(Sec. 606(a)(1); 20 U.S.C. 3196(a)(1))

§ 280.42 Qualifying plans.

(a) *Required plans.* (1) An LEA may apply if it is implementing a plan—

(i) That has been undertaken under a final order issued by—

(A) A court of the United States;

(B) A court of any State; or

(C) Any other State agency or official of competent jurisdiction;

(ii) That requires the desegregation of minority group segregated children or faculty in the LEA's elementary and secondary schools, or otherwise requires the elimination or reduction of minority group isolation in those schools; and

(iii) That may, in addition, require educational activities in minority group isolated schools not affected by the reassignment of children or faculty under the plan in order to remedy the effects of illegal segregation.

(2) For the purpose of paragraph (a)(1) of this section, a State agency or official of competent jurisdiction means any State agency or official authorized under State law to issue such an order.

(Sec. 606(a)(1)(A)(i); 20 U.S.C. 3196(a)(1)(A)(i))

(3) An LEA may apply if it is implementing a plan that has been approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in the LEA's schools.

(Sec. 606(a)(1)(A)(ii); 20 U.S.C. 3196(a)(1)(A)(ii))

(b) *Nonrequired plans.* (1) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan for the complete elimination of minority group isolation in all its minority group isolated schools.

(Sec. 606(a)(1)(B); 20 U.S.C. 3196(a)(1)(B))

(2) (i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to—

(A) Eliminate or reduce minority group isolation in one or more of its minority group isolated schools; or

(B) Reduce the total number of minority group children who are enrolled in its minority group isolated schools.

(ii) Elimination of minority group isolation is a change in a school's enrollment resulting in a reduction in the proportion of minority group children from greater than 50 percent to 50 percent or less.

(iii) Reduction of minority group isolation is a change in a school's enrollment after which the proportion of minority group children is reduced, but remains greater than 50 percent.

(Sec. 606(a)(1)(C)(i) and (ii), 617(7); 20 U.S.C. 3196(a)(1)(C)(i) and (ii), 3207(7))

(3) (i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to prevent minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in any of its schools in which at least 20 percent, but not more than 50 percent, of the enrollment consists of minority group children.

(ii) The Secretary considers minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in a school only if the LEA demonstrates by credible evidence that minority group children will comprise more than 50 percent of the enrollment of the school during the first fiscal year for which it seeks assistance or the next succeeding fiscal year. This evidence may include, but is not limited to—

(A) Enrollment figures for the school during previous fiscal years;

(B) Enrollment figures of schools from which the enrollment of the school is drawn;

(C) Demographic data concerning the attendance area served by the school; and

(D) School board resolutions or other evidence of final official action likely to affect the enrollment of the school during the first fiscal year for which assistance is sought or the next succeeding fiscal year.

(Sec. 606(a)(1)(C)(iii); 20 U.S.C. 3196(a)(1)(C)(iii))

(4) (i) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to enroll and educate in its schools children who should not otherwise be eligible for enrollment because of nonresidence in its school district, where that enrollment would make a significant contribution toward

reducing minority group isolation in one or more school districts.

(ii) The Secretary considers an LEA's plan to make a significant contribution toward reducing minority group isolation only if it involves the enrollment by the applicant of at least—

(A) 100 children who should not otherwise be eligible for enrollment because of nonresidence in its school district; or

(B) A number of these children that constitutes 10 percent of the enrollment of either the applicant's schools or a school district in which the children would be enrolled in the absence of the plan.

(iii) Reducing minority group isolation in one or more school districts, for the purpose of this paragraph (b)(4), refers to any of the changes in enrollment described in paragraph (b)(2) of this section in any school district to which the plan relates.

(Sec. 606(a)(1)(D); 20 U.S.C. 3196(a)(1)(D))

(5) A plan described in paragraph (b)(2), (3), or (4) of this section does not meet the requirements of this section if the elimination, reduction, or prevention of minority group isolation accomplished or to be accomplished in schools to which the plan relates results in an equal or greater degree of minority group isolation in other schools operated by the LEA or LEAs to which the plan relates.

(Secs. 602(b), 606(a)(1)(C) and (D); 20 U.S.C. 3192(b), 3196(a)(1)(C) and (D))

(c) *Implementation of a plan.* For purposes of determining an LEA's eligibility for assistance, the Secretary considers the LEA to be implementing a plan if—

(1) It is operating its school system in accordance with the requirements of the plan; and

(2) In the case of a required or nonrequired plan to eliminate, reduce, or prevent minority group isolation, or a plan to reduce the total number of minority group children who are enrolled in its minority group isolated schools, the degree of minority group isolation in its schools is less than the degree that would have existed in the absence of the plan.

(Sec. 606(a)(1); 20 U.S.C. 3196(a)(1))

(d) An LEA shall include in its application the following:

(1) (i) A complete copy of the plan upon which it bases its application for assistance under this section (including all relevant legal documents); or

(ii) If it has submitted a copy of some or all of that plan in an application currently on file with the Secretary, an identification of the documents submitted and a copy of any changes or additions to the plan since the submission.

(2) A summary of the present requirements for that plan.

(3) In the case of a plan described in paragraph (b) of this section, a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement it upon the award of assistance.

(4) In the case of a plan to prevent minority group isolation described in paragraph (b)(3) of this section, where minority group children constitute more than 50 percent of the enrollment of all the schools operated by the LEA—

(i) A statement of the enrollment, by race, in any of its schools in which minority group children constitute more than 70 percent of the enrollment;

(ii) A statement of the reasons for that disproportionate minority group enrollment in each school; and

(iii) A statement of instructional and other services to be provided to children enrolled in each school that will ensure that services to those children are comparable to services to be provided to children enrolled in any school in which minority group isolation will be prevented under the plan described in paragraph (b)(3) of this section.

(Secs. 606(a)(1), 610(a); 20 U.S.C. 3196(a)(1), and 3200(a))

§ 280.43 Authorized activities.

An LEA may use funds under a basic grant for any activity that is designed to meet an educational need that arises from a qualifying plan (described in § 280.42). Section 607(a) of the Act lists examples of authorized activities.

(Sec. 607(a); 20 U.S.C. 3197(a))

§ 280.44 Application procedures.

(a) An LEA that wishes to apply shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements in this part.

(b) The LEA shall include in its application a needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the implementation of the LEA's qualifying plan.

(c) The LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Sec. 610(a); 20 U.S.C. 3200(a))

§ 280.45 Approval of new projects.

(a) The Secretary decides whether to approve a new project on the basis of the procedures in this section.

(Secs. 602(b), 610(d); 20 U.S.C. 3192(b), 3200(d))

(b) Applications for new projects submitted by LEAs in each State are considered separately.

(Sec. 605; 20 U.S.C. 3195)

(c) (1) Each application is assigned to one of the categories in this paragraph on the basis of the date the LEA implemented the qualifying plan on which it bases its application.

(i) Category I contains applications relating to plans with implementation dates not more than three years before the July 1 that follows the deadline date for applications.

(ii) Category II contains applications relating to plans with implementation dates more than three, but not more than six, years before that date.

(iii) Category III contains applications relating to plans with implementation dates more than six years before that date.

(2) (i) The implementation date of a plan is the date of the first change in the enrollment of a school—or, in the case of a plan for the desegregation of minority group segregated faculty, the first reassignment of a faculty member—under the plan.

(ii) If an LEA is implementing more than one plan, or a plan that provides for reassignments over a period of time, the implementation date is the date of the greatest change in the enrollments of schools, or the greatest change in the assignment of faculty members, as appropriate. To establish the implementation date, the LEA may measure change in terms of either the number or the percentage of children or faculty members (as appropriate) who are reassigned under the plan. Upon request, the LEA shall demonstrate to the Secretary's satisfaction that the implementation date is accurate.

(3) (i) The Secretary makes awards for all approvable applications contained in Category I before those in Category II.

(ii) The Secretary makes awards for all approvable applications contained in Category II before those in Category III.

(Secs. 610(d)(1) and (3); 20 U.S.C. 3200(d)(1) and (3))

(d) (1) Within each category, applications are ranked on the basis of the net change in isolation in the applicant's schools between the fiscal year just prior to the implementation date of its plan ("base year") and the first fiscal year for which it seeks assistance ("project year"). The net change in isolation is computed on the basis of the procedures in this paragraph.

(2) The minority group percentage of the enrollment of each of the applicant's schools in the base year is computed. The number of minority group students enrolled in schools within each percentage range in column A of the table below is determined. The number of students in each percentage range is then multiplied by the corresponding weight in column B of the table. The resulting weighted numbers are added. The sum is then divided by the total number of minority group students.

Column A—minority group percentage	Column B—weight
95 or more	0.0
At least 90 but less than 95	.1
At least 85 but less than 90	.2
At least 80 but less than 85	.3

Column A—minority group percentage	Column B—weight
At least 75 but less than 80	4
At least 70 but less than 75	5
At least 65 but less than 70	6
At least 60 but less than 65	7
At least 55 but less than 60	8
At least 50 but less than 55	9
50 or less	10

(3) The computation described in paragraph (d)(2) of this section is repeated using the number of minority group students to be enrolled in the applicant's schools in the project year.

(4) The result of the computation for the base year is subtracted from the result of the computation for the project year to determine the change between those two years.

(5) Applications are ranked on the basis of the degree of change described in paragraph (d)(4) of this section. Each application is assigned an ordinal number representing its place in rank order.

(6) A second rank order is then prepared. The sum of the weighted numbers of minority group children enrolled in the applicant's schools in the base year is subtracted from the sum of these numbers in the project year. Applications are ranked on the basis of the degree of increase in minority group enrollment reflected in this computation. Each application is assigned a second ordinal number representing its place in rank order.

(7) An application is considered for approval on the basis of the average of the two ordinal numbers assigned to it.

(8) In the case of a tie, the Secretary first considers the application that contains the higher quality project, as determined under paragraph (e) of this section.

(Sec. 610(d)(1) and (2); 20 U.S.C. 3200(d)(1) and (2))

(e) (1) The Secretary reviews each application to determine if it contains activities that address educational needs that arise from the implementation of the LEA's qualifying plan.

(2) (i) If the application contains activities described in paragraph (e)(1) of this section, the Secretary evaluates the quality of the proposed project as it relates to those activities.

(ii) In evaluating the quality of the proposed project, the Secretary considers—

(A) The degree to which the purpose and objectives of the project address needs directly related to the qualifying plan;

(B) The magnitude of the plan-related educational needs addressed by the project activities;

(C) The realism of the applicant's timeline for the achievement of project objectives;

(D) The quality of the applicant's proposed methods of achieving project objectives;

(E) The effectiveness of the applicant's plan for the management of resources and personnel to achieve each project objective;

(F) The qualifications of the project director, if any, and of other key project personnel;

(G) The adequacy of the resources, including facilities, equipment, and supplies, to carry out the project;

(H) The quality of the applicant's proposed budget, in terms of its adequacy for the project and the reasonableness of costs in relation to expected benefits;

(I) The quality of the applicant's plan for the evaulation of the project;

(J) The quality of the applicant's assessment of the effect, if any, of the project on members of traditionally underrepresented groups, such as those described in 34 CFR 75.111(d); and

(K) The degree to which the project is a part of a commitment of the total educational resources, both public and private, of the community to be served by the plan.

(iii) On the basis of this review, the Secretary decides whether an award to the applicant is warranted.

(Sec. 602(b), 605(b)(3), 607(a), 610(d)(1), (4) and (5); 20 U.S.C. 3192(b), 3195(b)(3), 3197(a), 3200(d)(1), (4) and (5))

(f) (1) If, on the basis of the review described in paragraph (e) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (e) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original application to meet educational needs that arise from the implementation of its plan.

(Sec. 610(f)(2); 20 U.S.C. 3200(f)(2))

§ 280.46 Length of project.

(a) The Secretary may approve a project period of up to 60 months.

(b) The Secretary decides the length of a project period on the basis of the following factors:

(1) The severity and likely duration of the educational needs addressed by the applicant's proposed activities.

(2) The nature of those activities.

(c) When approving an award for the first budget period of a multiyear project, the Secretary indicates his or her intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Sec. 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 280.47 Approval of continuation awards.

The Secretary approves a continuation award for a budget period after the first budget period of a multi-year project if—

(a) Sufficient appropriations are available for the budget period under Section 610(e)(2)(A) of the Act;

(b) The applicant is not ineligible for assistance under applicable provisions of §§ 280.21 through 280.24; and

(c) The applicant is making satisfactory progress toward achieving the objectives of its project. Satisfactory progress includes the applicant's continued compliance with, and implementation of, any plan on which its eligibility for assistance is based, as provided by §§ 280.19 and 280.42(c).

(Sec. 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart D—Special Project Grants

PLANNING GRANTS

§ 280.50 Purpose.

The purpose of a planning grant is to develop a qualifying plan (described in § 280.42).

(Sec. 604(b)(2), 606(a)(1)(E), 608(a); 20 U.S.C. 3194(b)(2), 3196(a)(1)(E), 3198(a))

§ 280.51 Eligible applicants.

(a) An LEA may apply for a planning grant.

(b) No LEA may apply for a planning grant if it has received such a grant before.

(c) An LEA that applies for assistance to develop a required plan described in § 280.42(a) need not meet the requirements of § 280.23 or § 280.24, if it provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections by providing for their cessation upon the implementation of the plan.

(Secs. 606(a)(1), 606(a)(1)(E), 606(c)(2), 608(a); 20 U.S.C. 3196(a)(1), 3196(a)(1)(E), 3196(c)(2), 3198(a))

§ 280.52 Authorized activities.

An LEA may use funds under a planning grant for any activity that is reasonably related to developing a qualifying plan.

(Secs. 606(a)(1)(E), 608(a); 20 U.S.C. 3196(a)(1)(E), 3198(a))

§ 280.53 Application procedures.

(a) An LEA may apply for a planning grant at any time.

(b) The applicant shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements of this part.

(c) If the applicant applies for a grant to develop a required plan described in § 280.42(a), it shall include in its application—

(1) A copy of the final order of the court, agency, or official that requires a plan described in § 280.42(a)(1); or

(2) A copy of the Secretary's finding of illegal separation of minority group

children or faculty that requires a plan described in § 280.42(a)(3).

(d) If the applicant applies for a grant to develop a nonrequired plan described in § 280.42(b), it shall include in its application—

(1) The names of the schools in which minority group isolation will be eliminated, reduced, or prevented—or, in the case of a plan described in § 280.42(b)(4), the school districts from which nonresident children will come—under the plan; and

(2) Evidence that the plan will be implemented at the end of the proposed project.

(e) The applicant shall include in its application an assurance that it has met and will meet applicable requirements in the Act and in this part.

(Secs. 606(a)(1)(E), 608(a), 610(a); 20 U.S.C. 3196(a)(1)(E), 3198(a), 3200(a); S. Rep. No. 856, 95th. Cong., 2d Sess. 66 (1978))

§ 280.54 Approval of projects.

(a) The Secretary decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 280.1(b), as indicated by—

(1) The factors listed in § 280.45(e)(2)(ii) (C) through (J); and

(2) The extent to which the application contains evidence that a plan will be implemented at the end of the proposed project.

(Sec. 610(d); 20 U.S.C. 3200(d))

(b) (1) If, on the basis of the review described in paragraph (a) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (a) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original application that were reasonably related to developing a qualifying plan.

(Sec. 610(f)(2); 20 U.S.C. 3200(f)(2))

(c) (1) The Secretary may approve a project period of up to 24 months for a planning grant.

(2) The Secretary decides the length of a project period on the basis of—

(i) The severity and likely duration of the problems to which the plan would be addressed; and

(ii) The nature of the applicant's proposed activities.

(3) When approving an award for the first budget period of a multiyear project, the Secretary indicates an intention to make a continuation award for a second budget period.

(Sec. 610(e)(1); 20 U.S.C. 3200(e)(1))

(d) The Secretary approves a continuation award for a second budget period on the basis of the standards in § 280.47.

(Secs. 606(a)(1)(E), 610(e)(2); 20 U.S.C. 3196(a)(1)(E), 3200(e)(2))

TRANSITIONAL GRANTS

§ 280.60 Purposes.

A transitional grant may be awarded for any one of the following purposes:

(a) *Pre-implementation assistance*—to help an LEA that has adopted but not yet implemented a required plan (described in § 280.42(a)) to prepare for the reassignment of children or faculty under the plan.

(b) *Out-of-cycle assistance*—to help an LEA to meet educational needs that arise from the implementation of a plan described in § 280.42 that the LEA adopted too late to serve as the basis for a basic grant application in the most recent competition under Subpart C.

(c) *Special discretionary assistance*—to help an LEA meet an unexpected educational need that arose from the implementation of a plan described in § 280.42 after the deadline date for basic grant applications in the most recent competition under Subpart C.

(Secs. 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 280.61 Eligible applicants.

(a) LEAs, SEAs, other public agencies, and private nonprofit agencies and organizations are eligible to apply for transitional grants.

(b) However, an applicant that is not an LEA may apply for a transitional grant only at the request of the LEA that it proposes to help.

(Sec. 608(a); 20 U.S.C. 3198(a))

§ 280.62 Authorized activities.

(a) The recipient of a pre-implementation assistance grant described in § 280.60(a) may use funds under the grant for any activity designed to meet an educational need that is reasonably related to the LEA's preparing for the reassignment of children or faculty under the plan.

(b) The recipient of an out-of-cycle assistance grant described in § 280.60(b) may use funds under the grant for any activity designed to meet an educational need that arises from the implementation of the plan.

(c) The recipient of a special discretionary assistance grant described in § 280.60(c) may use funds under the grant for any activity designed to meet the unexpected educational need described in that paragraph.

(Sec. 608(a); 20 U.S.C. 3198(a))

§ 280.63 Application procedures.

(a) An applicant may apply for a transitional grant at any time.

(b) The applicant shall meet applicable requirements of 34 CFR Part 75 (described in § 280.3) and the requirements of this part.

(c) An applicant shall include in its application—

(1) Except in the case of an application for a grant described in § 280.60(c) from an LEA that has a basic grant, a copy of the LEA's qualifying plan;

(2) A needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the LEA's plan;

(3) If the applicant is not an LEA, a copy of the LEA's request for the applicant's help; and

(4) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Secs. 608(a), 610(a); 20 U.S.C. 3198(a), 3200(a))

§ 280.64 Approval of projects.

(a) The Secretary decides whether an award to the applicant is warranted on the basis of—

(1) The factors listed in § 280.45(c)(2)(ii)(A) through (K);

(2) Whether another applicant has submitted, or is likely to submit, an application to meet the need addressed by the proposed activities; and

(3) The recentness of the LEA's implementation of its qualifying plan, and the effectiveness of the plan in decreasing minority group isolation.

(Sec. 610(d); 20 U.S.C. 3200(d))

(b) (1) If, on the basis of the review described in paragraph (a) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (a) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original application to meet needs described in § 280.60

(Sec. 610(f)(2); 20 U.S.C. 3200(f)(2))

(c) (1) The Secretary may approve a project period of up to 18 months for a transitional grant.

(2) The Secretary decides the length of a project period on the basis of—

(i) The severity and likely duration of the problems addressed by the proposed activities;

(ii) The nature of those activities; and

(iii) The availability of other assistance under the Act for those activities.

(3) When approving an award for the first budget period of a multi-year project, the Secretary indicates an intention to make a continuation award for a second budget period.

(4) The Secretary approves a continuation award for a second budget period on the basis of the standards in § 280.47.

(Sec. 610(e)(1) and (2); 20 U.S.C. 3200(e)(1) and (2))

(d) The Secretary does not set the amount of a grant described in § 280.60(a) or (c) of this part $100,000.

(Sec. 608(a), 20 U.S.C. 3198(a))

GRANTS FOR THE ARTS

§ 280.70 Purpose.

The purpose of a grant for the arts is to provide, through the arts, opportunitites for interracial and intercultural communication and understanding to help meet the special needs incident to the implementation of a qualifying plan (described in § 280.42).

(Secs. 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 280.71 Eligible applicants.

A public agency other than an LEA that is responsible for the administration of statewide public arts programs may apply for a grant for the arts at the request of the LEA or LEAs that it proposes to serve.

(Sec. 608(a); 20 U.S.C. 3198(a))

§ 280.72 Eligibility for services from a grantee.

A grantee shall conduct activities under the grant primarily with students who attend schools—

(a) That are affected by a qualifying plan;

(b) In which the minority group enrollment is between 20 and 80 percent; and

(c) That are operated by LEAs that are in compliance with the requirements of §§ 280.21 through 280.24.

(Secs. 608(a); 20 U.S.C. 3198(a))

§ 280.73 Authorized activities.

A grantee may use funds to carry out any activity that is reasonably related to the purpose of a grant for the arts described in § 280.70.

(Sec. 608(a); 20 U.S.C. 3198(a))

§ 280.74 Application procedures.

(a) An applicant shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements of this part.

(b) An applicant shall include in its application—

(1) A copy of the qualifying plan for each LEA that the applicant proposes to serve, unless the LEA has submitted its plan to the Secretary;

(2) A copy of the request for the applicant to serve the LEA, from each LEA that the applicant proposes to serve;

(3) An assurance, signed by an authorized official of each LEA that the applicant proposes to serve, that the LEA is in compliance with §§ 280.21 through 280.24;

(4) Evidence, such as a copy of a State statutory provision or executive order, that the applicant is a public agency responsible for the administration of statewide public arts programs; and

(5) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Sec. 608(a); 20 U.S.C. 3198(a))

§ 280.75 Approval of projects.

(a) The Secretary decides whether an award to the applicant is warranted on the basis of—

(1) The factors listed in § 280.45(e)(2)(ii) (A) through (K); and

(2) The recentness of each LEA's implementation of its qualifying plan, and the effectiveness of the plan in decreasing minority group isolation.

(Sec. 610(d); 20 U.S.C. 3200(d))

(b) (1) If, on the basis of the review described in paragraph (a) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (a) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's

original application to carry out the purpose set out in § 280.70.

(Sec. 610(f)(2); 20 U.S.C. 3200(f)(2))

(c) The maximum assistance for any budget period for a grant for the art is $100,000.

(d) The Secretary does not award more than one grant for activities in any State.

(Sec. 608(a); 20 U.S.C. 3198(a))

METROPOLITAN AREA GRANTS

§ 280.80 Purposes.

A metropolitan area grant is for either of the following purposes:

(a) To establish or maintain one or more integrated schools (defined in § 280.4).

(b) To support the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools within a Standard Metropolitan Statistical Area (SMSA) (defined in § 280.4).

(Secs. 604(b)(2), 606(a)(2), 609(a); 20 U.S.C. 3194(b)(2), 3196(a)(2), 3199(a)).

§ 280.81 Eligible applicants.

(a) *Integrated schools.* A LEA may apply for a grant if—

(1) It is located within an SMSA or serves a school district adjacent to a school district that is located within an SMSA;

(2) The total student enrollment of the LEA includes a percentage of minority group students that is smaller than the percentage of minority group students enrolled in all schools in the SMSA; and

(3) (i) It has made a joint arrangement for the establishment or maintenance of one or more integrated schools (defined in § 280.4) with a cooperating LEA—

(A) That is located within the same SMSA; and

(B) That has a total student enrollment that includes a percentage of minority group students that is greater than the percentage of minority group students enrolled in all the schools in that SMSA.

(ii) A joint arrangement must consist of the enrollment in schools of the applicant LEA of students residing in the district served by, or attending the schools of, the cooperating LEA. The arrangement may not result in an increase in the degree of minority group isolation in any school operated by any LEA. The arrangement must involve the enrollment in the applicant's schools of only those students who in the absence of the arrangement would be enrolled in, or assigned to, a minority group isolated school.

(Secs. 606(a)(2), 609(a)(1), 617(3); 20 U.S.C. 3196(a)(2), 3199(a)(1), 3207(3))

(b) *Area-wide plans.* (1) Two or more LEAs located within an SMSA may apply for a grant for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in that SMSA. The plan must, at a minimum, provide that by a certain date—no later than July 1, 1983—the percentage of minority group children enrolled in each public elementary and secondary school in the SMSA will be at least 50 percent of the percentage of minority group children enrolled in all those schools.

(2) The Secretary does not make a grant under this paragraph unless—

(i) Two-thirds or more of the LEAs in an SMSA have approved the application; and

(ii) The number of students in the schools of those agencies that have approved the application constitutes two-thirds or more of the number of students in the schools of all the LEAs in the SMSA.

(Secs. 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 280.82 Authorized activities.

(a) *Integrated schools.* (1) The recipient of a grant under § 280.80(a) may use funds under the grant for any activity that is designed to meet an educational need that arises from the joint arrangement described in § 280.81(a)(3).

(2) The recipient may also use these funds to pay the net cost, if any, to the recipient of enrolling and educating in its integrated schools students from the cooperating LEA.

(Sec. 609(a)(1); 20 U.S.C. 3199(a)(1))

(b) *Area-wide plans.* (1) The recipient of a grant under § 280.80(b) may use funds under the grant for any activity reasonably necessary to the joint development of a plan described in § 280.81(b).

(2) The recipient may not use these funds for construction of facilities.

(Sec. 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 280.83 Application procedures.

(a) An LEA that wishes to apply for a metropolitan area grant shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements in this part.

(b) An LEA that wishes to apply for a metropolitan area grant shall meet the requirements in § 280.10, relating to public and advisory committee participation. However, reference to an LEA in paragraph (a)(2) of that section includes—

(1) The cooperating LEA, in the case of an application for an integrated schools project described in § 280.80(a); and

(2) All the LEAs in the SMSA, in the case of an application for an area-wide plan project described in § 280.80(b).

(c) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Sec. 610(a); 20 U.S.C. 3200(a))

§ 280.84 Approval of new projects.

(a) (1) The Secretary decides whether an award to the applicant for an integrated schools project is warranted on the basis of—

(i) The factors listed in § 280.45(e)(2)(ii)(A) through (K), as they relate to the applicant's integrated schools plan; and

(ii) The recentness of the LEA's implementation of its integrated schools plan, and the effectiveness of the plan in decreasing minority group isolation.

(2) The Secretary decides whether an award to an applicant for an area-wide plan project is warranted on the basis of the factors listed in § 280.45(e)(2)(ii)(C) through (J).

(Sec. 610(d); 20 U.S.C. 3200(d))

(b) (1) If, on the basis of the review described in paragraph (a) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (a) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original application to carry out the purposes set out in § 280.80.

(Sec. 610(f)(2); 20 U.S.C. 3200(f)(2))

§ 280.85 Length of project.

(a) Awards of metropolitan area grants are subject to the provisions of § 280.46(a) and (c), relating to the length of a project.

(b) The Secretary sets the length of a project period on the basis of the following factors:

(1) The severity and likely duration of the problems addressed by the proposed activities.

(2) The nature of those activities.

(c) However, the project period for a grant for an area-wide plan, described in § 280.81(b), may not extend beyond July 1, 1983.

(Sec. 609(a)(2), 610(e)(1); 20 U.S.C. 3199(a)(2), 3200(e)(1))

§ 280.86 Approval of continuation awards.

Awards of metropolitan area grants are subject to the provisions of § 280.47, relating to the approval of continuation awards.

(Sec. 610(e)(2); 20 U.S.C. 3200(e)(2))

OTHER SPECIAL PROJECTS

§ 280.90 Use of discretionary funds.

The Secretary may use funds appropriated under Section 604(b)(2) of the Act for the following types of awards:

(a) The types of grants described in this subpart.

(b) Grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to achieve the purposes of the Act described in § 280.1(b).

(c) Magnet school, university/business cooperation, and neutral site planning grants described in Subpart E.

(d) State agency grants described in Subpart H.

(e) Television and radio contracts described in Subpart I.

(f) Evaluation contracts under Section 613 of the Act.

(g) Any other type of award described in this Part 280.

(h) Contracts, consistent with the requirements of the Act, for particular purposes designed to achieve the purposes of the Act described in § 280.1(b).

(Sec. 604(b)(2), 608(a), 617(10); 20 U.S.C. 3194(b)(2), 3198(a), 3207(10))

§ 280.91 Applicable requirements.

(a) The requirements of the Act and this part that relate to a type of award apply to the use of any funds for that type of award (for example, basic grants under Subpart C, or planning grants under this subpart).

(b) However, if the Secretary uses funds appropriated under Section 604 (b)(2) for basic grants described in Subpart C, the Secretary does so in the following way:

(1) The Secretary determines the amount needed for all activities that—

(i) Are in applications that were placed in Categories I or II (as described in § 280.45(c)) in the most recent competition under Subpart C;

(ii) Are approvable after the review described in § 280.45; and

(iii) Cannot be approved because of insufficient funds under Subpart C.

(2) The Secretary allocates available funds to support the activities described in paragraph (b)(1) of this section in the following way:

(i) The Secretary determines each State's proportion of the total amount needed for those activities.

(ii) The Secretary allocates to each State the same proportion of the total amount available for allocation.

(3) The Secretary uses allocated funds to make awards to LEAs for the activities described in paragraph (b)(1) of this section on the basis of the criteria in Section 610(d) of the Act.

(4) If the amount available for allocation exceeds the amount needed for all activities described in paragraph (b)(1) of this section, the Secretary allocates and uses the excess amount as described in this paragraph, except that "Categories I or II" in paragraph (b)(1)(i) of this section means "Category III" for this purpose.

(Secs. 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

Subpart E—Magnet School, University/Business Cooperation and Neutral Site Planning Grants

§ 280.100 Purposes.

(a) The purposes of magnet school grants are to plan, design, and conduct educational programs in magnet schools (defined in § 280.4).

(b) The purpose of university/business cooperation grants is to conduct cooperative programs between LEAs and institutions of higher education (defined in § 280.4) or businesses.

(c) The purpose of neutral site planning grants is to develop plans for neutral site schools (defined in § 280.4).

(Secs. 604(b)(2); 608(a)(1)-(3), 617(5) and (8); 20 U.S.C. 3194(b)(2), 3198(a)(1)-(3), 3207 (5) and (8))

§ 280.101 Eligible applicants.

(a) An LEA may apply for a grant under this subpart.

(Secs. 608(a)(1)-(3); 20 U.S.C. 3198(a)(1)-(3); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976))

(b) In the case of a grant to conduct educational programs in a magnet school, the Secretary considers the curriculum of the magnet school to be capable of attracting substantial numbers of students of different racial backgrounds if—

(1) The LEA—

(i) Does not compel any student to enroll in the magnet school for any part of the grant period; and

(ii) Does not compel any student to enroll in another school after enrolling in the magnet school; and

(2) Sixty days after the beginning of the first school term, any part of which falls within the grant period, or 90 days after the effective date of the

grant, whichever is later, the enrollment of the school meets the following requirements:

(i) Where minority group students do not constitute more than 50 percent of the LEA's total enrollment, they constitute—

(A) At a minimum, 20 percent of the school's enrollment; and

(B) At a maximum, 20 percentage points more than their percentage of the LEA's total enrollment.

(ii) Where minority group students constitute more than 50 percent of the LEA's total enrollment, they constitute—

(A) At a minimum, 20 percentage points less than their percentage of the LEA's total enrollment; and

(B) At a maximum, 80 percent of the school's enrollment.

(c) (1) An LEA's failure to meet the requirements of paragraph (b) of this section is grounds for terminating the grant, insofar as it relates to a school affected by the failure, as of—

(i) The date of any compulsory enrollment referred to in paragraph (b)(1) of this section; or

(ii) The applicable date referred to in paragraph (b)(2) of this section.

(2) However, the Secretary, at the written request of the LEA, may forebear from terminating the grant if he or she determines that the LEA—

(i) Has substantially complied with these requirements; and

(ii) Is likely to attain full compliance in the near future.

(Secs. 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

§ 280.102 Authorized activities.

An LEA may use funds under the grant for the activities described in this section.

(a) *Magnet schools.* (1) Funds may be used for the following three activities:

(i) The planning or design of one or more magnet schools.

(ii) The conduct of educational programs in one or more magnet schools where these programs are a part of, or directly related and necessary to, the special curriculum of a magnet school.

(iii) The repair and minor remodeling or alteration of existing school facilities in connection with the conduct of educational programs described in this paragraph (a)(1) of this section.

(2) "Special curriculum", as used in the definition of "magnet school" in § 280.4, means a course of study embracing subject matter or a teaching methodology that is not generally offered to students of the same age or grade level, and in the same LEA, as the students to whom the special curriculum is offered. This term does not include—

(i) A course of study or a part of a course of study designed solely to provide basic educational services to handicapped students or to students of limited English-speaking ability;

(ii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited English-speaking ability;

(iii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited financial resources; or

(iv) A course of study or a part of a course of study which fails to provide for a participating student's meeting the requirements for completion of elementary or secondary education in the same period as other students enrolled in the applicant's schools.

(3) The planning and design of a magnet school includes, but is not limited to, the following activities:

(i) Planning and design of educational programs for the school.

(ii) Architectural design of new or modified facilities to house the school.

(iii) Surveys and studies relating to the establishment or improvement of the school.

(iv) Recruitment of students and staff for the school.

(4) (i) The Secretary awards funds for the conduct of educational programs in a magnet school only if the LEA's fiscal effort per student for students enrolled at a magnet school is no less than its fiscal effort per student for students enrolled at all schools serving students of the same age or grade level operated by the applicant in the fiscal year for which it seeks assistance under this subpart.

(ii) For the purpose of paragraph (a)(4) of this section, "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, (excluding costs relating solely to length of service), attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students with respect to whom the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(Sec. 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

(b) *University/business cooperation.* Funds may be used for—

(1) The conduct of educational programs by the applicant, in cooperation with one or more institutions of higher education or businesses, for the benefit of students enrolled, or staff employed, in—

(i) A magnet school assisted under this subpart; or

(ii) A school affected by a qualifying plan described in § 280.42; and

(2) The repair and minor remodeling or alteration of facilities in connection with the conduct of these educational programs.

(Sec. 608(a)(2); 20 U.S.C. 3198(a)(2))

(c) *Neutral site planning.* (1) Funds may be used for the development of plans for one or more neutral site schools, including but not limited to the following activities:

(i) Surveys and studies to determine the location of the school.

(ii) Planning educational programs for the school.

(iii) Architectural design of facilities to house the school.

(iv) The repair and minor remodeling or alternation of facilities in connection with the development of plans for the school.

(2) Funds may be used only in connection with a school planned to have the following characteristics.

(i) Minority group students will constitute no less than 20 percent and no more than 80 percent of the enrollment of the school.

(ii) Within those limits, minority group students will constitute a proportion of the enrollment of the school that generally reflects their proportion of the enrollment of all the LEA's schools.

(iii) The school will be equally accessible to minority group and nonminority group students who will be enrolled in it.

(3) Funds may not be used for—

(i) The acquisition or improvement of a site for the school;

(ii) The construction of facilities to house the school;

(iii) The acquisition of equipment for the school; or

(iv) Any activity related to the operation of the school.

(Sec. 608(a)(3), 617(8); 20 U.S.C. 3198(a)(3), 3207(8))

§ 280.103 Application procedures.

(a) An LEA that wishes to apply for a grant under this subpart shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements in this part.

(b) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(c) In the case of an application for a grant to carry out activities relating to magnet schools and university/business cooperation, respectively, the applicant shall also include in its application—

(1) The number of minority group students and the total number of students enrolled or to be enrolled in each of its schools in the following years:

(i) The "base year" (meaning the second fiscal year prior to the first fiscal year for which an applicant seeks assistance under this subpart); and

(ii) The "project year" (meaning the first fiscal year for which an applicant seeks assistance under this subpart); and

(2) A descripton of the basis for its enrollment projections for the project year.

(Sec. 610(a); 20 U.S.C. 3200(a))

§ 280.104 Approval of new projects—magnet schools and university/business cooperation.

(a) The Secretary ranks applications to carry out activities relating to magnet schools and university/business cooperation on the basis of the net change in isolation in the applicant's schools between the base year and the project year. The net change in isolation is computed on the basis of the procedures in § 280.45(d)(2) through (d)(7). In the case of a tie, the Secretary first considers the application that contains the higher quality project, as determined under paragraph (b) of this section.

(b) The Secretary reviews each application to determine whether the activities that the applicant proposes to carry out afford promise of achieving the purposes of the Act described in § 280.1(b). In making this determination, the Secretary considers—

(1) The factors listed in § 280.45(e)(2)(ii)(C) through (J); and

(2) The extent to which the proposed activities are related to the elimination, reduction, or prevention of minority group isolation in all the applicant's schools.

(c) On the basis of this review, the Secretary decides whether an award to the applicant is warranted.

(d) (1) If, on the basis of the review described in paragraph (b) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (b) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original application to carry out the purposes set out in § 280.100(a) and (b).

(Secs. 610(d), 610(f)(2); 20 U.S.C. 3200(d), 3200(f)(2))

§ 280.105 Approval of new projects—neutral site planning.

(a) The Secretary decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 280.1(b), as indicated by—

(1) The factors listed in § 280.45(e)(2)(ii)(C) through (J); and

(2) The extent to which the application contains evidence that a plan will be implemented at the end of the proposed project.

(b) (1) If, on the basis of the review described in paragraph (a) of this section, the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(2) If the applicant chooses to modify its application, the Secretary reviews it as described in paragraph (a) of this section. However, the amount of an award may not exceed the amount that would have been required for activities in the applicant's original applicaton to carry out the purpose set out in § 280.100(c).

(Secs. 610(d), 610(f)(2); 20 U.S.C. 3200(d), 3200(f)(2))

§ 280.106 Length of project.

(a) (1) The Secretary may approve a project period of up to 60 months for activities relating to magnet schools and university/business cooperation.

(2) The Secretary may approve a project period of up to 24 months for planning activities.

(b) The Secretary sets the length of the project period on the basis of—

(1) The severity and likely duration of the problems addressed by the proposed activities; and

(2) The nature of those activities.

(c) When approving an award for the first budget period of a multiyear project, the Secretary indicates an intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Sec. 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 280.107 Approval of continuation awards.

Section 280.47 applies to the approval of continuation awards under this subpart.

(Sec. 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart F—Compensatory Service Grants

§ 280.110 Purpose.

The purpose of a compensatory service grant is to continue compensatory services to students who previously received those services at least in part under Title I but who would, in the project period, otherwise not receive them as a result of an attendance area or enrollment change under a qualifying plan (described in § 280.42).

(Sec. 604(c); 20 U.S.C. 3194(c))

§ 280.111 Definitions.

The following definitions apply to terms used in this subpart:

"Attendance area or enrollment change" means any change in the policy of an LEA that results in any student's voluntary or mandatory enrollment at a school other than the school at which the student would normally have been enrolled in the absence of the change in policy.

"Compensatory services" means any services authorized under Title I to meet the special educational needs of educationally deprived children.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Sec. 604(c); 20 U.S.C. 3195(c))

§ 280.112 Eligible applicants.

An LEA may apply for a compensatory service grant if—

(a) It is implementing—

(1) A required plan described in § 280.42(a)(1) that was ordered after August 21, 1974;

(2) A required plan described in § 280.42(a)(3) that was approved after that date; or

(3) A nonrequired plan described in § 280.42(b) that was implemented after that date;

(b) Under the plan, there are attendance area or enrollment changes; and

(c) As a result of the attendance area or enrollment changes, students who received compensatory services funded in whole or in part under Title I would, in the project period, no longer receive those services because of their enrollment in schools that are ineligible for Title I services.

(Sec. 604(c)(1); 20 U.S.C. 3194(c)(1); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976))

§ 280.113 Authorized activities.

(a) An LEA may use funds under the grant to—

(1) Provide compensatory services to students adversely affected by a plan described in § 280.112, as further defined in paragraphs (b) and (c) of this section; and

(2) Provide services to other students as provided for in Section 604(c)(2)(B)(ii) of the Act.

(b) A student is eligible to receive compensatory services under paragraph (a)(1) of this section if—

(1) The student received compensatory services funded under Title I at any time prior to the implementation of a plan described in § 280.112;

(2) The student is not receiving any compensatory services funded under Title I in the project period because of his or her enrollment in a school that is ineligible for Title I services;

(3) The student is an educationally deprived child, for Title I purposes, at the beginning of the project period; and

(4) In the absence of a plan described in § 280.112, the student would be enrolled in a school in which compensatory services funded under Title I were provided during the last regular school term prior to the implementation of the plan, for the grade in which the student is enrolled during the project period.

(c) In addition, a student (including a student enrolled in a private nonprofit school) is eligible to receive compensatory services under paragraph (a)(1) of this section if—

(1) The student meets the requirement in paragraph (b)(1) of this section; and

(2) The applicant shows by credible evidence that attendance area or en-

rollment changes under a plan described in § 280.112 alone caused the student to receive, in the project period, no compensatory services under Title I.

(d) (1) The LEA shall ensure that at least 30 percent of the enrollment of a compensatory service project funded under the Act is comprised of students who are—

(i) Enrolled in the same school as students eligible under paragraph (a)(1) of this section; and

(ii) Not eligible under paragraph (a)(1) of this section.

(2) An LEA may not use funds under the grant in any manner that would result in the isolation of the students eligible under paragraph (a)(1) of this section from other students enrolled in the same school.

(e) (1) An LEA shall use funds under the grant to provide to each student eligible under paragraph (a)(1) of this section the level of compensatory services the student failed to receive from other sources in the project period because of attendance area or enrollment changes under a plan described in § 280.112.

(2) However, if the Secretary has reduced the grant amount under § 280.115, the LEA may use the grant funds to provide services to only some of those students, or to provide fewer services to those students, or both.

(Sec. 604(c); 20 U.S.C. 3194(c))

§ 280.114 Application procedures.

(a) An applicant shall meet applicable requirements in 34 CFR Part 75 (described in § 280.3) and the requirements of this part.

(b) An applicant shall include in its application the following information:

(1) A copy of the plan on which the applicant bases its eligibility for assistance.

(2) A precise description of attendance area or enrollment changes under the plan.

(3) The number of students eligible to receive compensatory services under § 280.113(a)(1) and a description of how the applicant determined their eligibility.

(4) A description of the compensatory services for which the applicant seeks assistance.

(5) An assurance that it has met and will meet applicable requirements of the Act and this part.

(Sec. 610(a); 20 U.S.C. 3200(a))

§ 280.115 Funding procedures.

(a) The Secretary may approve a project period of up to 12 months.

(b) To the extent funds permit, the Secretary sets the amount of each grant at a level sufficient to provide to each student eligible under § 280.113(a)(1) the level of compensatory services he or she will not receive in the project period because of attendance area or enrollment changes under a plan described in § 280.112, consistent with the requirements of Section 604(c)(2) of the Act.

(c) If the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(1) Notifies the applicant of the specific reasons for disapproval; and

(2) Gives the applicant an appropriate opportunity to modify its application.

(d) If the amount needed to fund all approvable services exceeds the amount of funds available, the Secretary reduces the amount for each grant by an equal proportion.

(Secs. 604(c), 610(d), 610(f)(2); 20 U.S.C. 3194(c), 3200(d), 3200(f)(2))

Subpart G—Nonprofit Organization Grants

SOURCE: 45 FR 54005, Aug. 13, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

§ 280.120 Purpose.

The purpose of a nonprofit organization grant is to support an LEA's development or implementation of a qualifying plan described in § 280.42.

(Sec. 604(b)(3), 608(b); 20 U.S.C. 3194(b)(3), 3198(b))

§ 280.121 Eligible applicants.

(a) Any public or private nonprofit agency, institution or organization (NPO), other than an LEA, is eligible to apply for a grant under this subpart.

(b) An NPO may receive a grant under this subpart regardless of whether the LEA whose plan the NPO proposes to support applies for assistance under the Act.

(c) An NPO that proposes to support the development of a qualifying plan must receive a written request for that assistance from the LEA, except in the case of a plan described in § 280.42(a) that has been required but not yet adopted.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.122 Authorized activities.

(a) Except as provided in paragraph (b) of this section, an NPO may apply for any activity that is designed to support the development or implementation of a qualifying plan. These activities include, but are not limited to—

(1) Encouraging parental and community involvement in matters relating to the development or implementation of the plan;

(2) Providing information to parents and community members on the contents of the plan;

(3) Monitoring the implementation of the plan;

(4) Carrying out activities designed to promote interracial and intercultural understanding among students who are affected by, or are reasonably likely to be affected by, the implementation of the plan;

(5) Carrying out activities designed to stimulate a desire to learn in those students;

(6) Addressing non-academic problems faced by those students—at home, in school, or in the community—that affect their adjustment to schools to which the plan relates;

(7) Promoting student understanding of and support for the plan;

(8) Providing training to LEA staff related to the development or implementation of the plan; and

(9) Providing specialized technical assistance to LEA staff in areas related to the development or implementation of the plan, such as the development of affirmative action programs or the review of curricular materials.

(b) (1) An NPO may not use funds under this subpart in connection with the provision of compensatory education or the development of basic skills.

(2) An NPO may not use funds under this subpart for monitoring the implementation of the plan where a court-appointed group is conducting a similar activity.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.123 Application procedures.

(a) An NPO may include in an application activities in support of only one qualifying plan. However, an NPO may submit more than one application.

(b) An NPO shall include in its application a needs assessment that shows the severity of the needs addressed by the proposed activities and the relationship of those needs to the development or implementation of a qualifying plan.

(c) An NPO shall address each selection criterion in §§ 280.126-280.133 that applies to its application.

(d) An NPO that proposes to support the implementation of a qualifying plan shall include in its application—

(1) A copy of the LEA's qualifying plan or a detailed description of that plan; and

(2) The date when the LEA adopted the plan.

(e) An NPO that proposes to support the development of a plan shall include a copy of the LEA's request for that assistance, if a request is required under § 280.121(c).

(f) An NPO shall include in its application an assurance that it has met and will meet the applicable requirements of the Act and this part.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.124 Approval of new projects.

(a) Applications for projects to support the development of qualifying plans and those to support the implementation of qualifying plans are considered separately. The Secretary states in the application notice published in the FEDERAL REGISTER the amount of funds available for each type of project.

(b) The Secretary evaluates applications for projects that support the development of qualifying plans on the basis of the selection criteria in §§ 280.127-280.133. The Secretary evaluates applications for projects that support the implementation of qualifying plans on the basis of the selection criteria in §§ 280.126-280.132.

(c) If more than one otherwise approvable project relates to the same qualifying plan, the Secretary—

(1) Reviews the approvable activities to identify any duplication in the needs addressed by those activities; and

(2) In the case of duplication, approves only the activity contained in the highest ranking application.

(d) The Secretary may approve a project period of up to 36 months.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.125 Selection criteria.

The number of points awarded for each criterion depends on how well the application addresses all the factors under the criterion. The total possible score for an implementation grant is 100 points and for a development grant 107 points. The selection criteria in §§ 280.127-280.133 apply to an application for a project that supports the development of a qualifying plan. The selection criteria in §§ 280.126-280.132 apply to an application for a project that supports the implementation of a qualifying plan.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.126 Selection criterion: Recency of qualifying plan (3 points).

(a) In the case of an application for a project that supports the implementation of a qualifying plan, the Secretary considers the recency of the implementation date of the qualifying plan on which the applicant bases its application.

(b) In assessing the recency of a qualifying plan, the Secretary uses the table set out below. The Secretary assigns each application the number of points in column B that corresponds to the period of time in column A between—

(1) The implementation date of the LEA's plan on which the applicant bases its eligibility, as described in § 280.45(c)(2); and

(2) The July 1 that follows the deadline date for applications under this subpart.

TABLE

Col. A—Implementation date	Col. B—Points
3 years or less	3
More than 3 years but not more than 6 years	2
More than 6 years	1

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.127 Selection criterion: Need (20 points).

The Secretary considers:

(a) The severity of the needs to be addressed (10 points).

(b) The extent to which the identified needs are directly related to the development or implementation of the qualifying plan (10 points).

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.128 Selection criterion: Project design (40 points).

The Secretary considers the extent to which:

(a) The project objectives are likely to meet the identified needs (10 points).

(b) The proposed activities are designed to meet the objectives within the project period (10 points).

(c) The parents, students, teachers, and community members are involved in the development and implementation of the project (5 points).

(d) The applicant demonstrates sensitivity to the community and the population to be served (5 points).

(e) The applicant's management plan is effective in terms of resource allocation, realistic schedules, and a sufficient amount of time to be spent on the project by the proposed staff members (10 points).

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.129 Selection criterion: Organizational experience (10 points).

The Secretary considers the extent to which the applicant has experience in working effectively with the LEA and with community organizations, especially on matters related to school desegregation and race relations.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.130 Selection criterion: Personnel (15 points).

The Secretary considers the extent to which—

(a) The project director and other key project staff members are qualified on the basis of training and experience, to carry out the project (10 points).

(b) The applicant's staff includes such racial and cultural diversity as may be necessary to facilitate the success of the project (5 points).

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.131 Selection criterion: Evaluation plan (5 points).

The Secretary considers the quality of the proposed plan for evaluating the success of the project in achieving the stated objectives.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.132 Selection criterion: Budget (7 points).

The Secretary considers the extent to which proposed costs are reasonable in relation to the expected benefits of the project.

(Sec. 608(b); 20 U.S.C. 3198(b))

§ 280.133 Selection criterion: Commitment to plan adoption (10 points).

In the case of an application for a project that supports the development of a qualifying plan, the Secretary considers the extent to which the cooperating LEA has demonstrated its commitment to the adoption of a qualifying plan.

(Sec. 608(b); 20 U.S.C. 3198(b))

Subpart H—State Agency Grants

§ 280.140 Purpose.

The purpose of a State agency grant is to pay a portion of the cost to a State of the activities described in § 280.142.

(Secs. 604(b)(2), 608(c); 20 U.S.C. 3194(b)(2), 3198(c))

§ 280.141 Eligible applicants.

(a) A State agency may apply for a grant under this subpart if—

(1) It is involved in or responsible for the desegregation of public elementary and secondary schools; and

(2) It obligated funds derived from State sources for the activities described in § 280.142 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated.

(b) The Secretary does not make more than one grant for activities in any State. If more than one State agency in a State is elibible under paragraph (a) of this section, the Secretary makes any grant under this subpart to the agency most directly responsible for carrying out the activities in § 280.142 in the State.

(Sec. 608(c); 20 U.S.C. 3198(c))

§ 280.142 Authorized activities.

(a) A State agency may use funds under the grant for the following activities:

(1) Planning for the implementation of voluntary plans to eliminate or reduce minority group isolation in public elementary and secondary schools.

(2) Assessing future needs for those plans, and developing strategies to meet those needs.

(3) Providing technical assistance to encourage LEAs or groups of LEAs to develop or implement those plans.

(4) Providing training for educational personnel involved in developing or carrying out those plans.

(b) A State agency may not use funds under the grant for grants to LEAs.

(c) The plans described in this section include—

(1) A plan described in § 280.42(b)(1), (2), and (4); and

(2) A plan described in § 280.42(a)(3) where the elimination or reduction of minority group isolation under the plan was voluntary within the meaning of Section 602 of the Civil Rights Act of 1964.

(Sec. 608(c)(1); 20 U.S.C. 3198(c)(1); 42 U.S.C. 2000d-1)

§ 280.143 Application procedures.

(a) A State agency that wants to apply for a grant shall meet applicable requirements of 34 CFR Part 75 (described in § 280.3) and the requirements of this part.

(b) (1) The applicant shall develop its application in consultation with teachers, educators, parents (including parents of minority group children) and representatives of the general public (including representatives of minority groups).

(2) At a minimum, the applicant shall consult with an advisory committee composed of the persons described in paragraph (b)(1) of this section. The proportion of the committee membership that is comprised of minority group members must be approximately the same as the proportion of children enrolled in the elementary and secondary schools in the State that is comprised of minority group children.

(3) The applicant shall include in its application the written comments of the advisory committee concerning the application.

(c) The applicant shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Sec. 608(c)(1) and (3); 20 U.S.C. 3198(c)(1) and (3))

§ 280.144 Approval of projects.

(a) The Secretary approves a project if the proposed activities are authorized under § 280.142.

(b) (1) In setting the amount of a grant, the Secretary first determines the amount of funds derived from State sources that was obligated by eligible applicants in a State, as provided in 34 CFR 75.707, for the activities described in § 280.142 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated. The Secretary then sets the approvable amount of the grant at twice that amount.

(2) If the approvable amount of a grant under subparagraph (1) exceeds the amount justified by the applicant for authorized activities, the Secretary reduces the approvable amount to the amount justified.

(3) If the Secretary decides that an application should be disapproved in whole or in part, the Secretary first—

(i) Notifies the applicant of the specific reasons for disapproval; and

(ii) Gives the applicant an appropriate opportunity to modify its application.

(4) If necessary, the Secretary further reduces the approvable amount of a grant in any fiscal year to the greater of the following:

(i) Ten percent of the amount apportioned to the State for that fiscal year under Section 605 of the Act; or

(ii) $500,000.

(5) If, after the reductions described in paragraphs (b)(2) and (4) of this section, the amount needed for all approvable grants exceeds the amount of funds available, the Secretary reduces the amount for each grant by an equal proportion.

(c) The Secretary approves a project period of not more than 12 months for a State agency grant.

(Secs. 608(c), 610(d), 610(f)(2); 20 U.S.C. 3198(c), 3200(d), 3200(f)(2))

Subpart I—Television and Radio Contracts

§ 280.150 Purpose.

The purpose of a contract under this subpart is to—

(a) Develop and produce a children's television or radio program that—

(1) Is of cognitive or affective educational value, or both;

(2) Facilitates successful integration of elementary or secondary schools; and

(3) Appeals to both minority and nonminority children; or

(b) Carry out ancillary activities designed to make these programs available for transmission and utilization.

(Secs. 604(b)(2), 611; 20 U.S.C. 3194(b)(2), 3201)

§ 280.151 Eligible offerors.

Any public or private nonprofit agency, institution, or organization capable of providing expertise in the activities authorized under this subpart is eligible to submit a proposal for a contract.

(Sec. 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 280.152 Authorized activities.

The Secretary makes contracts for—

(a) *Development and production*—the development and production of children's television and radio programs described in § 280.150(a); and

(b) *Ancillary activities*—the following activities, where they are related to programs developed and produced under this subpart:

(1) Duplication of tapes and other materials to meet broadcaster and other user needs.

(2) Promotion of viewership or listenership.

(3) Promotion of carriage by commercial broadcasters.

(4) Promotion of use by schools and others.

(Sec. 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 280.153 Proposal procedures.

An offeror may submit a proposal for a contract in response to a Request for Proposals published by the Secretary.

(Sec. 611; 20 U.S.C. 3201)

§ 280.154 Selection of contractors.

(a) The selection of contractors is subject to—

(1) The provisions of Section 611 of the Act; and

(2) To the extent they are consistent with the regulations in this part—

(i) Applicable Requests for Proposals; and

(ii) The Federal Procurement Regulations in 41 CFR Chapters 1 and 34.

(b) *Development and production.* In establishing the competitive range for proposals for the development and production of programs, as provided for under the Federal Procurement Regulations, the Secretary considers each of the following for each proposal:

(1) The quality of the needs assessment, and the magnitude of the assessed needs.

(2) The relationship of the proposed program's objectives to the assessed needs.

(3) The relationship of the proposed program to the objectives.

(4) The attainability of the objectives through the proposed program.

(5) The likely artistic and educational significance of the proposed program.

(6) The appropriateness of the proposed program format and content to the target age group.

(7) The research and production techniques that the offeror will use.

(8) The qualifications of the project staff.

(9) The offeror's employment of minority group members in—

(i) Responsible administrative positions; and

(ii) Responsible development and production positions on the project staff.

(10) The quality of supplementary materials, such as teachers' guides and student workbooks, where appropriate.

(11) The schedule of activities and deliverables.

(12) The effectiveness of procedures for evaluating the educational and other effects of the proposed program on children.

(13) The adequacy of the offeror's facilities.

(c) *Ancillary activities.* In establishing the competitive range for proposals for ancillary activities, as provided for under the Federal Procurement Regulations, the Secretary applies criteria included in the Request for Proposals for a particular activity.

(Sec. 611(a)(1) and (3); 20 U.S.C. 3201(a)(1) and (3))

§ 280.155 Requirements for offerors.

(a) *Usage.* An offeror to develop and produce a program shall include in its proposal an assurance that it will comply with each of the following requirements with respect to the program for which it seeks a contract.

(1) It will not charge users of the programs—whether broadcast or nonbroadcast—any cost beyond that of tape distribution and duplication.

(2) Any contract between a contractor and a talent union must allow at least the usages of the programs in this paragraph (a)(2) without charge to the user. However, the Secretary may authorize lesser usages on a find-

ing that the cost of these usages would be excessive.

(i) Six years of usage by public broadcasting stations starting with the first broadcast by such a station. A "year of usage" means unrestricted use during three separate weeks of any given 12 month period.

(ii) Twelve years of unrestricted use for in-school audiovisual purposes. For television programs, this includes transmission of the program by education-dedicated, local origination, CATV channels and Instructional Television Fixed Services systems.

(iii) One broadcast over commercial stations in each of two 3-year periods, including broadcasts that result from network originations.

(iv) If the program is distributed by a public network and is not broadcast in a commercial station's coverage area, one additional broadcast by the commercial station in a 3-year period.

(3) The contractor will not permit the program to be made available for transmission under commercial sponsorship. However, if a commercial firm meets the costs of transmission, a brief statement to that effect at the beginning or end of the transmission is permissible. A commercial spot announcement must be demarcated by a station identification.

(4) A contractor that develops and produces a television program shall not give a station the exclusive right to broadcast any program in a coverage area until the thirteenth week after the first week in which it is broadcast in that area.

(5) The contractor will not permit the transmission or use of a program in any manner that results in a financial benefit to any person or organization.

(6) The contractor will cooperate with the Secretary in making arrangements for the transmission of the programs.

(Sec. 611(a)(2); 20 U.S.C. 3201(a)(2))

(b) *Credit.* (1) Each television or radio program—except for radio materials of less than three minutes in length—must carry the following credit: "This program was produced by [name of contractor] under a contract from the U.S. Department of Education."

(2) Radio materials of less than three minutes in length must conclude with the following statement: "This message has been brought to you by the U.S. Department of Education."

(Sec. 611; 20 U.S.C. 3201)

PART 295—CAREER EDUCATION, STATE ALLOTMENT PROGRAM

GENERAL

Sec.
295.1 Scope.
295.2 Purposes.
295.3 Definitions.
295.4 Regulations that apply to the State Allotment Program.

ALLOTMENTS

295.11 Eligible applicants.
295.12 Allotments.
295.13 Allotments for Fiscal Year 1979.
295.14 Allotments for Fiscal Years 1980-81.
295.15 Allotments for Fiscal Years 1982-83.

USE OF FUNDS

295.21 Use of funds.

LOCAL EDUCATIONAL AGENCIES

295.31 Applications and review.
295.32 Use of funds.

PRIVATE SCHOOLS

295.41 Private school participation.

MAINTENANCE OF EFFORT AND COST SHARING

295.51 Maintenance of effort.
295.52 Federal share of expenditures for employing State personnel.
295.53 Federal share of expenditures for State leadership and local implementation.
295.54 Reports.
APPENDIX—ASSURANCES

AUTHORITY: Secs. 2-16, Pub. L. 95-207, 91 Stat. 1464-1474 (20 U.S.C. 2601-2614, 2502), unless otherwise noted.

SOURCE: 44 FR 60024, Oct. 17, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

GENERAL

§ 295.1 Scope.

Part 295 contains regulations for the State allotment program of the Career Education Incentive Act (Pub. L. 95-207).

(Secs. 1-9, 13-16, 20 U.S.C. 2601-2608, 2612-2614, 2502)

§ 295.2 Purposes.

(a) Recipients of funds under this part shall make career education a major goal in education by increasing the emphasis they place on career awareness, exploration, decision making, and planning.

(b) Recipients shall conduct activities in a manner that promotes equal opportunities in making career choices for students engaging in the activities and programs assisted under the Act.

(c) Recipients shall eliminate practices that promote bias and stereotyping based on race, sex, age, economic status, national origin and handicap.

(Sec. 3, U.S.C. 2602)

§ 295.3 Definitions.

(a) *Definitions in EDGAR.*

The following terms used in this part are defined in Part 77 of The Education Department General Administratve Regulations:

"Applicant"
"Applications"
"EDGAR"
"Grant"
"Nonprofit"
"Private"
"Program"
"Project"
"Public agency"

(b) The following definitions apply to these regulations:

"Act" means the Career Education Incentive Act, Pub. L. 95-207.

(20 U.S.C. 2601-2614, 2502)

"Bias" means behavior resulting from the assumption that one person or group of persons is superior or inferior to another person or group of persons on the basis of sex, race, age, economic status, national origin, or handicap.

"Discrimination" means any action that limits or denies a person or group of persons opportunities, privileges, roles, or rewards on the basis of race, sex, age, national origin, or handicap.

(Sec. 15, 20 U.S.C. 2614)

"Insular Areas" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(48 U.S.C. 1469a)

"Plan" means the State plan required under section 7 of the Act.

"Recipient" means a State or Insular Area that receives an allotment under this part.

"State" means any one of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The definition of "State" in 34 CFR Part 77 of EDGAR does not apply to this program.

"Stereotyping" means attributing behavior, abilities, interests, values, and roles to a person or group of persons on the basis of sex, race, age, economic status, national origin, and handicap.

In addition, the definitions in section 15 of the Act apply to this part.

(Sec. 15, 20 U.S.C. 2614)

[44 FR 60024, Oct. 17, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 295.4 Regulations that apply to the State Allotment Program.

(a) *Regulations.* The following regulations apply to the State Allotment Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 295.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 2301 *et seq.*)

[45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

ALLOTMENTS

§ 295.11 Eligible applicants.

Any State or Insular Area may apply for an allotment of funds under this part.

(Sec. 5, 20 U.S.C. 2604)

§ 295.12 Allotments.

(a) The Secretary determines each State's allotment of funds for career education according to the formula in section 5 of the Act.

(b) No State will be allotted less than $125,000 for a fiscal year.

(Sec. 5(a)(1), 20 U.S.C. 2604)

(c) The Secretary may reserve an amount, in accordance with section 5 of the Act, for payments to the Insular Areas.

(Sec. 5(a)(2)(D), 20 U.S.C. 2604)

§ 295.13 Allotments for Fiscal Year 1979.

(a) A State applying for an allotment of funds for Fiscal Year 1979 must file an application that contains the assurances listed in the appendix to these regulations.

(Sec. 6, 20 U.S.C. 2605)

(b) An Insular Area applying for an allotment of funds for Fiscal Year 1979 must file assurances in the same manner as a State.

(Implements Sec. 5(a)(2)(D), 20 U.S.C. 2606)

§ 295.14 Allotments for Fiscal Years 1980-81.

(a) A State applying for an allotment for each of the Fiscal Years 1980 and 1981 must submit a plan to the Secretary by July 1, 1979. In the plan the State must:

(1) Provide the information specified in section 7 of the Act;

(2) Describe the methods it plans to use to evaluate the extent to which it has:

(i) Achieved its objectives for State leadership and local implementation of career education; and

(ii) Eliminated discrimination, bias, and stereotyping in career education activities; and

(3) Describe the methods it plans to use to evaluate the overall effectiveness of State leadership and coordination and of local implementation.

(b) An Insular Area applying for an allotment for each of the Fiscal Years 1980 and 1981 must file a plan in the same manner as a State. The plan must contain the information required in § 295.14(a).

(Implements Sec. 7, 20 U.S.C. 2606)

(c) The Secretary pays each State or Insular Area its allotment of funds for each of these fiscal years, provided the State or Insular Area has filed the assurances in accordance with § 295.13 and is in compliance with sections 6, 7, and 8 of the Act for Fiscal Years 1980 and 1981.

(Sec. 9(a)(1), 20 U.S.C. 2608)

§ 295.15 Allotments for Fiscal Years 1982-83.

(a) The Secretary pays the State or Insular Area its allotment of funds for each Fiscal Year 1982 and 1983 provided the State or Insular Area is in compliance with sections 7 and 8 of the Act, for Fiscal Years 1980 and 1981.

(b) The Secretary reduces the recipient's allotment in proportion to the extent the Secretary determines the recipient has failed to meet the objectives in its plan.

(Implements Secs. 7, 9(a)(2), 20 U.S.C. 2606, 2608)

USE OF FUNDS

§ 295.21 Use of funds.

(a) No State may reserve more than 10 percent of its funds received under this part for providing State leadership activities listed in section 8(a)(2) of the Act, either directly or through arrangements with public agencies and private organizations, including institutions of higher education.

(Secs. 8(a)(2), 9(b)(1), 20 U.S.C. 2607, 2608)

(b) No State may reserve more than 10 percent of its funds received under this part for Fiscal Year 1979 and 5 percent of its funds in Fiscal Years 1980, 1981, 1982, and 1983 for—

(1) Employing additional State educational agency (SEA) personnel as required for administration and coordi-

nation of programs assisted under the Act; and

(2) Reviewing and revising the State plan.

(Secs. 8(a) (1) and (4), 9(b)(2), 20 U.S.C. 2607, 2608)

(c) The remainder of these funds—the funds not reserved as described in paragraphs (a) and (b) of this section—must be distributed by the State to local educational agencies (LEAs) for comprehensive career education programs described in Section 8(a)(3) of the Act.

(Sec. 9(b), 20 U.S.C. 2608)

(d) At least 15 percent of the funds distributed to LEAs, as described in paragraph (c) of this section, must be used for programs to develop and implement comprehensive career guidance, counseling, placement, and follow-up services using counselors, teachers, parents, and community resource personnel. For example, the State's allotment is $1,000,000 and the total amount distributed to the LEAs in the State is $850,000. At least 15 percent of this amount, or $127,500, must be used for these purposes. Each LEA does not have to use 15 percent of the funds it receives for these purposes. Some may use more. Some may use less, but the average amount spent by all the LEAs for these purposes must be at least 15 percent of the total LEAs' distribution, or $127,500.

(Secs. 6(10), 9(b), 20 U.S.C. 2605, 2608)

LOCAL EDUCATIONAL AGENCIES

§ 295.31 Applications and review.

(a) To obtain funds for comprehensive career education programs, a local educational agency (LEA) must apply to its State educational agency (SEA).

Sec. 8(a)(3), (b), 20 U.S.C. 2607)

(b) Each SEA shall review applications and may make payments to LEAs, on an equitable basis to the extent practicable, on the basis of criteria established by the SEA and criteria in section 8(b) of the Act.

(Sec. 8(b), 20 U.S.C. 2607)

§ 295.32 Use of funds.

LEAs may use funds for any of the purposes specified in section 8(a)(3) of the Act.

(Sec. 8(a)(3), 20 U.S.C. 2607)

PRIVATE SCHOOLS

§ 295.41 Private school participation.

(a) Unless a State is prohibited by law from providing services to students and teachers in nonprofit private schools, the State must make provisions for the effective participation on an equitable basis of these students and teachers in programs assisted under this part. Services for students in private nonprofit schools shall be provided in accordance with 34 CFR 76.650 through 76.662 (EDGAR).

(Secs. 8(c)(1), 9(d)(1), 20 U.S.C. 2607, 2608)

(b) In States that are prohibited by law from providing for participation of students in private non-profit schools in programs under this part or if the State or LEA has substantially failed to provide for participation of these students on an equitable basis, the Secretary arranges for provision of services to these students in accordance with section 9(d) of the Act.

(Secs. 8(c)(1), 9(d) (1) and (2), 20 U.S.C. 2607, 2608)

(c) Services to students and teachers in nonprofit private schools shall be provided by employees of a public agency or through a contract between the public agency and a person, association, private agency, or corporation, each of which must be independent of any private school or of any religious organization. The employment or contract must be under the control or supervision of a public agency.

(Secs. 8(c)(1), 9(d)(1), 20 U.S.C. 2607, 2608)

(d) No funds to accommodate students and teachers in private schools shall be commingled with State or local funds.

(Sec. 8(c)(2)(B), 20 U.S.C. 2607)

[44 FR 60024, Oct. 17, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

MAINTENANCE OF EFFORT AND COST SHARING

§ 295.51 Maintenance of effort.

A State shall expend from its own sources an amount that is equal to or greater than the amount the State expended for career education in the immediately preceding fiscal year.

(Sec. 6(3)(A), 20 U.S.C. 2605)

§ 295.52 Federal share of expenditures for employing State personnel.

The Federal share of the cost of employing State personnel under section 8(a)(1) of the Act (subject to the limitation in § 295.21) shall not exceed:

(a) 100 percent in Fiscal Year 1979;

(b) 75 percent in Fiscal Year 1980; and

(c) 50 percent in Fiscal Years 1981, 1982, and 1983.

(Sec. 9(c)(1), 20 U.S.C. 2608)

§ 295.53 Federal share of expenditures for State leadership and local implementation.

The Federal share of the cost of providing State leadership for career education and making payments for local implementation (subject to the limitation in § 295.21) shall not exceed:

(a) 100 percent in Fiscal Years 1979 and 1980;

(b) 75 percent in Fiscal Year 1981;

(c) 50 percent in Fiscal Year 1982; and

(d) 25 percent in Fiscal Year 1983.

(Sec. 9(c)(2), 20 U.S.C. 2608)

§ 295.54 Reports.

Each grantee shall submit to the Secretary, on or before December 31, of each year (except the first year of operation under this program), a report that contains:

(1) An analysis of the extent to which each objective in the State plan has been achieved;

(2) A description of the extent to which SEAs and LEAs are using State and local resources to achieve these objectives and a description of the extent to which funds received under this Act have been used to achieve these objectives; and

(3) A description of each career education project funded within the State, including an analysis of the reasons for its successes or failures.

(Sec. 14, 20 U.S.C. 2613)

APPENDIX—ASSURANCES

A State or Insular Area shall assure the Secretary that it will conduct the State allotment program in Part 295 in accordance with the following provisions. Those provisions preceded by an asterisk do not apply to the Insular Areas.

1. The State has notified the legislature and the Chief Executive that it is applying for an allotment of funds under Part 295.

(Sec. 6(2), 20 U.S.C. 2605)

2. The State educational agency (SEA) will plan for the use of funds and will administer the expenditure of funds received under Part 295.

(Sec. 6(1), 20 U.S.C. 2605)

3. The State will make every possible effort to integrate career education into the regular educational programs offered in elementary and secondary schools.

(Sec. 6(4), 20 U.S.C. 2605)

4. The SEA will require that career education programs assisted under the State allotment program be administered by SEAs and local educational agencies (LEAs) in a way that affects all elementary and secondary school instructional programs and not solely as a part of the vocational education program.

(Sec. 6(5), 20 U.S.C. 2605)

5. The SEA will designate a person with prior experience in career education to coordinate the programs assisted under the State allotment program.

(Sec. 6(5), 20 U.S.C. 2605)

State Leadership Activities

6. The State will reserve not more than ten percent of its allotment for Fiscal Years 1979, 1980, 1981, 1982, and 1983 for the following State leadership activities:

(a) Conducting in-service institutes for educational personnel;

(b) Training local career education coordinators;

(c) Collecting, evaluating, and disseminating career education materials with special emphasis on overcoming sex bias;

(d) Conducting Statewide needs assessment and evaluation studies;

(e) Conducting Statewide career education leadership conferences;

(f) Engaging in collaborative relationships with other agencies of State government and with public agencies and private organizations representing business, labor, industry, and the professions and organizations of handicapped persons, minorities, women, low-income persons and the elderly; and

(g) Assisting institutions of higher education to adapt teacher-training curricula to the concept of career education.

(Sec. 6(11), 20 U.S.C. 2605)

7. The State will reserve not more than ten percent of its allotment for Fiscal Year 1979 and not more than five percent of its allotment for Fiscal Years 1980, 1981, 1982, and 1983 for:

(a) Employing additional personnel to administer and to coordinate programs described in Part 295; and

(b) Reviewing and revising the State plan.

*8. The **SEA** will employ the staff necessary to administer the State allotment program and the programs assisted under it, including but not limited to:

(a) A person or persons experienced in dealing with problems of discrimination in the labor market, and stereotyping in career education, including bias and stereotyping based on race, sex, age, national origin, economic status, and handicap;

(b) A professional trained in guidance and counseling who shall work jointly in the office of the principal staff person responsible for the administration of this program and in the office of the person responsible for guidance and counseling for the State, if the latter office exists.

Paragraph (8) does not apply if the State receives only the minimum allotment of funds for the fiscal year.

(Secs. 5(c), 6(6), 20 U.S.C. 2604, 2605)

Review and Revision of State Plans

9. The SEA will continuously review and revise the plan submitted under Part 295.

10. The SEA will report to the Secretary any amendments to the plan.

(Sec. 6(7), 20 U.S.C. 2605)

Maintenance of Effort and Cost Sharing

*11. The State will expend, from its own sources, an amount equal to or greater than the amount it expended for career education the immediately preceding fiscal year.

*12. The State will pay from non-Federal sources the non-Federal share of the costs of carrying out the plan for Fiscal Years 1980, 1981, 1982, and 1983.

(Sec. 6(3), 20 U.S.C. 2605)

State Payments to Local Educational Agencies

*13. If the State determines that the jurisdiction in which an LEA is located is making a reasonable tax effort, the State will not deny funds to the LEA solely because the agency is unable to pay the non-Federal share of cost of programs assisted under part 295.

*14. The State will not make payments to LEAs based on per capita enrollment or through matching of local expenditures on a uniform percentage basis.

(Sec. 6(9), 20 U.S.C. 2605)

*15. The State will make payments to LEAs, on an equitable basis to the extent practicable, on the basis of criteria established by the SEA and will consider the special needs of LEAs that serve areas with:

(a) High incidence and prevalence of youth and adult unemployment;

(b) Sparse population; or

(c) Relatively few students.

(Secs. 6(11), 8(b), 20 U.S.C. 2605, 2607)

Local Implementation Activities

16. The State will use at least 15 percent of funds reserved for payments to LEAs under section 9(b) of the Act to enable local agencies to develop and implement comprehensive career guidance programs. These programs include career counseling, information, placement, and follow-up services using counselors, teachers, parents, and community resource persons.

17. The State will distribute the remainder of its allotment of funds—not reserved under section 9(b) of the Act or as described in Assurance 16—to LEAs to enable them to conduct comprehensive programs, including:

(a) Incorporating career education concepts and approaches into the instructional program;

(b) Developing and implementing comprehensive career guidance counseling, placement, and follow-up services using counselors, teachers, parents, and community resource personnel;

(c) Developing and implementing collaborative relationships with business and community organizations, including those that are represented by handicapped persons, minority groups, women, older persons, low-income persons, and other members of the community, and using persons from these groups as resource persons in schools and for student field trips into the community;

(d) Providing students whose primary purpose is career exploration with non-discriminatory and non-stereotyped work experiences that relate to existing or potential career opportunities and with work experiences that do not cause students to displace other workers;

(e) Employing career education coordinators in LEAs or in combinations of these agencies (but not at the individual school building level);

(f) Training local career education coordinators;

(g) Providing in-service education for teachers, counselors, and school administrators to enable them to understand career education, the changing work patterns of men and women, ways of overcoming sex stereotyping in career education, ways of helping men and women broaden their career horizons, and to develop competencies in the field of career education;

(h) Conducting institutes for members of boards of LEAs, community leaders, and parents about the nature and goals of career education;

(i) Purchasing instructional materials and supplies for career education activities;

(j) Establishing and operating community career education councils with appropriate representation of women, minorities, older persons, low-income persons, and handicapped persons;

(k) Establishing and operating career education resource centers to serve both students and the general public;

(l) Adopting, reviewing, and revising local plans for coordinating the implementation of the comprehensive program; and

(m) Conducting needs assessments and evaluations.

(Secs. 6(8), (11), 8(a)(3), 9(b), 20 U.S.C. 2605, 2607, 2608)

Services to Students and Teachers in Nonprofit Private Schools

18. The State will consult with officials of private non-profit elementary and secondary schools. It will make provision for the effective participation, on an equitable basis, of students and teachers in programs and services assisted under Part 295.

19. A public agency will control the funds provided under Part 295 and maintain title to and administer the use of the materials and equipment acquired with these funds.

20. A public agency will provide these services to students and teachers in nonprofit private schools directly using agency employees, or through a contract.

21. The public agency will not award a contract for the provisions of these services to a person, association, private agency, or corporation that is not independent of any private school or religious organization.

22. The State will not commingle with State or local funds those funds received under Part 295 to accommodate students and teachers in private, non-profit schools.

(Secs. 6(11), 8(c), 20 U.S.C. 2605, 2607)

PART 296—CAREER EDUCATION, DISCRETIONARY PROGRAMS

GENERAL

Sec.
296.1 Scope.
296.2 Definitions.
296.3 Other regulations applicable to the career education discretionary programs.
296.4 Emphasis among project purposes.
296.5 Project duration.

MODEL PROGRAM

296.11 Purposes.
296.12 Eligible applicants.
296.13 Criteria for review of applications.

POSTSECONDARY CAREER EDUCATION DEMONSTRATION PROGRAM

296.21 Purposes.
296.22 Eligible applicants.
296.23 Criteria for review of applications.

CAREER EDUCATION INFORMATION PROGRAM

296.31 Purpose.
296.32 Eligible applicants.
296.33 Application information.

MODEL AND POSTSECONDARY APPLICATION REVIEW CRITERIA

296.41 Application review criteria.

AUTHORITY: Secs. 2-16, Pub. L. 95-207, 91 Stat. 1464-1474 (20 U.S.C. 2601-2614, 2505), unless otherwise noted.

SOURCE: 44 FR 60027, Oct. 17, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

GENERAL

§ 296.1 Scope.

Part 296 contains regulations for the discretionary model career education program, postsecondary career education demonstration program, and career education information program of the Career Education Incentive Act, Pub. L. 95-207.

(Secs. 10-12, 20 U.S.C. 2609-2611)

§ 296.2 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77 of EDGAR:

"Applicant"
"Applications"
"EDGAR"
"Grant"
"Nonprofit"
"Private"
"Program"
"Project"
"Public agency"
"Secondary school"

(b) As used in these regulations—

"Act" means the "Career Education Incentive Act", Pub. L. 95-207, 20 U.S.C. 2601-2614, 2502.

"Bias" means behavior resulting from the assumption that one person or group of persons is superior or inferior to another person or group of persons on the basis of sex, race, age, national origin, economic status, or handicap.

"Discrimination" means any action that limits or denies a person or group of persons opportunities, privileges, roles, or rewards on the basis of race, sex, age, national origin, or handicap.

"Exemplary career education program" means a career education program that has achieved the standard of performance prescribed by the Joint Dissemination Review Panel of the Department of Education.

"Stereotyping" means attributing behavior, abilities, interests, values, and roles to a person or group of persons on the basis of sex, race, age, national origin, economic status or handicap.

In addition, the definitions in section 15 of the Act apply to this part.

(Sec. 15, 20 U.S.C. 2614)

§ 296.3 Other regulations applicable to the career education discretionary programs.

(a) Programs or projects under this part are subject to the applicable provisions in:

(1) The Education Department General Administrative Regulations (EDGAR), Part 75 (Direct Grant Programs) and Part 77 (Definitions); and

(2) The regulations in this part.

(20 U.S.C. 2301 *et seq.*)

[44 FR 60027, Oct. 17, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 296.4 Emphasis among project purposes.

The Secretary, may, in any given year, support projects for one or more of the purposes in § 296.11 (model projects), § 296.21 (Postsecondary projects), and § 296.31 (career education information program). This is announced in the FEDERAL REGISTER.

(Secs. 10, 11, 12; 20 U.S.C. 2601, 2610, 2611)

§ 296.5 Project duration.

(a) Projects will be funded for one year.

(b) An applicant desiring funding for a project under this part more than one year must submit a new application each fiscal year.

(20 U.S.C. 1221e-3(a)(1), 2602)

MODEL PROGRAM

§ 296.11 Purposes.

The Secretary makes awards to eligible applicants to support projects at elementary and secondary levels that demonstrate effective techniques of—

(a) Eliminating or counteracting bias and stereotyping based on race, sex, age, national origin, economic status, and handicap as well as eliminating or counteracting discrimination in career awareness, exploration, decision making, and planning;

(b) Promoting and sustaining diverse community and parent collaboration in the delivery of career awareness, exploration, decision making, and planning; or

(c) Accommodating handicapped students in regular classrooms to enable them to engage effectively in career awareness, exploration, decision making, and planning.

(Sec. 10(a), 20 U.S.C. 2609)

§ 296.12 Eligible applicants.

(a) Those eligible to apply for grants for model career education projects are:

(1) State educational agencies (SEAs);

(2) Local educational agencies (LEAs);

(3) Institutions of postsecondary education; and

(4) Other non-profit agencies and organizations.

(b) New applicants, as well as those that have conducted projects of proven effectiveness may apply under this program.

(Sec. 10(a), 20 U.S.C. 2609)

§ 296.13 Criteria for review of applications.

The Secretary uses the criteria in § 296.41 to review applications for model project grants.

(Implements Sec. 10(a), 20 U.S.C. 2609)

POSTSECONDARY CAREER EDUCATION DEMONSTRATION PROGRAM

§ 296.21 Purposes.

(a) The Secretary may conduct a postsecondary career education program that supports demonstration projects that:

(1) Promote career education in postsecondary instructional programs;

(2) Promote postsecondary career guidance and counseling programs designed to overcome bias and stereotyping based on race, sex, age, national origin, economic status, or handicap; or

(3) Strengthen career guidance, counseling, placement, and follow-up services.

(b) Each project assisted under section 11 of the Act must be:

(1) Of national significance; or

(2) Of special value to others; and

(3) Free of bias, and stereotyping based on race, sex, age, economic status, and handicap, as well as discrimination.

(c) The Secretary makes awards for postsecondary career education projects that foster communication, coordination and collaboration among—

(1) Similar projects at local, State, and Federal levels;

(2) Community and business organizations.

(Sec. 11(a)(1)-(3), 20 U.S.C. 2610)

§ 296.22 Eligible applicants.

Those eligible to apply for awards are—

(a) Institutions of higher education;

(b) Public agencies; and

(c) Non-profit private organizations.

(Sec. 11(a), 20 U.S.C. 2610)

§ 296.23 Criteria for review of applications.

(a) The Secretary uses the criteria in § 296.41 to review applications for grants.

(Implements Sec. 11, 20 U.S.C. 2610)

(b) The Secretary does not approve an application unless—

(1) The applicant addresses at least one of the purposes specified in § 296.21; and

(2) The applicant includes adequate provisions for evaluating overall project effectiveness and the extent to which each objective is achieved.

(Sec. 11(b), 20 U.S.C. 2610)

CAREER EDUCATION INFORMATION PROGRAM

§ 296.31 Purpose.

The Secretary provides information to projects assisted under this Act and to the general public about—

(a) Federal programs that gather, analyze, and disseminate occupational and career information; and

(b) Exemplary career education programs, including programs assisted under this Act.

(Sec. 12, 20 U.S.C. 2611)

§ 296.32 Eligible applicants.

Public and private agencies and organizations are eligible to apply for contract awards to carry out the career education information program.

(Sec. 12, 20 U.S.C. 2611)

§ 296.33 Application information.

Applicants must apply in accordance with the application contents and application review criteria to be announced each fiscal year in the *Commerce Business Daily.*

(Implements Sec. 12, 20 U.S.C. 2611)

MODEL AND POSTSECONDARY APPLICATION REVIEW CRITERIA

§ 296.41 Application review criteria.

(a) The Secretary evaluates an application for a grant under the Model Program (§ 296.13) and the Postsecondary Career Education Demonstration Program (§ 296.23) on the basis of the selection criteria used in §§ 75.202 through 75.206 (EDGAR) and the criteria contained in these regulations. The maximum possible point score for each criterion indicates the relative importance assigned to that criterion by the Secretary.

(b) The selection criteria in EDGAR constitute 45 possible points and include the following:

(1) Plan of operation. (10 points)

(2) Quality of staff. (7 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (20 points)

(5) Adequacy of resources. (3 points)

(c) The criteria contained in the following paragraphs supplement the EDGAR criteria and constitute 55 possible points.

(1) *Need.* The extent to which the applicant clearly describes and documents the need for the project, including the population to be served and the project setting. (2 points)

(2) *Rationale.* The extent to which the applicant:

(i) Reviews and describes career education processes, techniques, and material developed in previous career education projects conducted by the applicant and/or by others.

(ii) Explains how relevant aspects of this previous work is to be utilized in implementing the proposed project. (3 points)

(3) *Objectives.* The applicant presents objectives that are:

(i) Clearly stated;

(ii) Relevant to project purposes;

(iii) Relevant to project needs;

(iv) Significant to others;

(v) Attainable; and

(vi) Measurable in terms of both the process and the outcome. (10 points)

(4) *Exemplary nature of project.* The extent to which the applicant's plan:

(i) Provides for a comprehensive career education project that, if successfully attained, holds high promise of serving as a useful model for others, and whose activities would be useful in other career education projects or programs for similar educational purposes. (10 points)

(ii) Contains provisions that foster coordination with similar projects, including plans for the development of an inventory of such projects and including provisions for collaborating with coordinators, managers, and staff of these projects. (10 points)

(iii) Contains specific measures to improve the project's career education activities by developing and maintaining effective education/work connections. (10 points)

(5) *The elimination or counteraction of stereotyping, bias and discrimination in career education activities.*

(i) The applicant addresses the need to eliminate discrimination, bias, and stereotyping in career education activities. (2 points)

(ii) The applicant's objectives adequately address the elimination of bias, and stereotyping based on race, sex, age, economic status, national origin, and handicap as well as the elimination of discrimination. (3 points)

(iii) The applicant's plan contains appropriate and effective procedures for achieving collaboration with organizations that include respectively, minorities, women, older persons, handicapped persons, and low-income persons. (3 points)

(iv) The personnel designated to carry out the project reflects an appropriate representation of women, minorities, older persons, and handicapped persons. (2 points)

The Secretary does not fund a project unless it scores at least 7 points on this criterion.

(Implements secs. 10(a), 11(a); 20 U.S.C. 2609, 2610)

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774

CHAPTER III—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

Part		Page
300	Assistance to states for education of handicapped children	777
301	Incentive grants	857
302	State operated programs for handicapped children	859
305	Regional resource centers	867
307	Centers and services for deaf-blind children	871
309	Early education for handicapped children	875
315	Auxiliary activities	881
318	Training personnel for the education of the handicapped	883
320	Recruitment of personnel and dissemination of information	890
322	Training program for teachers of handicapped children in areas with a shortage	891
324	Research in education of the handicapped	893
330	Captioned films loan service for the deaf program.	901
331	Educational media loan service for the handicapped program	903
332	Educational media research, production, distribution, and training	904
333	Centers for educational media and materials for the handicapped program	907
338	Regional education programs for handicapped persons	908
345	Gifted and talented children's education program: General	912
346	Gifted and talented children's education: State-administered program	914
347	Gifted and talented children's education program: Discretionary grant program	917

Part		*Page*
361	The State vocational rehabilitation services program	922
362	Project grants and other assistance in vocational rehabilitation	967
365	The State independent living rehabilitation services program	981
366	Centers for independent living	992
369	Vocational rehabilitation service projects	996
370	Client assistance projects	1003
371	Handicapped American Indian vocational rehabilitation service projects	1006
372	Comprehensive rehabilitation centers	1010
373	Special projects and demonstrations for providing vocational rehabilitation services to severely handicapped individuals	1013
374	Special projects and demonstrations for making recreational activities accessible to handicapped individuals	1016
375	Handicapped migratory agricultural and seasonal farmworker vocational rehabilitation service projects	1019
378	Projects for initiating special recreation programs for handicapped individuals	1021
379	Projects with industry	1023
385	Rehabilitation training	1027
386	Rehabilitation training: Rehabilitation long-term training	1032
387	Experimental and innovative training	1035
388	State vocational rehabilitation unit in-service training	1037
389	Rehabilitation continuing education programs	1039
390	Rehabilitation short-term training	1041
395	Vending facility program for the blind on Federal and other property	1043

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

Sec.

300.1 Purpose.
300.2 Applicability to State, local, and private agencies.
300.3 Regulations that apply to assistance to States for education of handicapped children.
300.4 Free appropriate public education.
300.5 Handicapped children.
300.6 Include.
300.7 Intermediate educational unit.
300.8 Local educational agency.
300.9 Native language.
300.10 Parent.
300.11 Public agency.
300.12 Qualified.
300.13 Related services.
300.14 Special education.

Subpart B—State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

300.110 Condition of assistance.
300.111 Contents of plan.

ANNUAL PROGRAM PLANS—CONTENTS

300.121 Right to a free appropriate public education.
300.122 Timeliness and ages for free appropriate public education.
300.123 Full educational opportunity goal.
300.124 Full educational opportunity goal—data requirement.
300.125 Full educational opportunity goal—timetable.
300.126 Full educational opportunity goal—facilities, personnel, and services.
300.127 Priorities.
300.128 Identification, location, and evaluation of handicapped children.
300.129 Confidentiality of personally identifiable information.
300.130 Individualized education programs.
300.131 Procedural safeguards.
300.132 Least restrictive environment.
300.133 Protection in evaluation procedures.
300.134 Responsibility of State educational agency for all educational programs.
300.135 [Reserved]
300.136 Implementation procedures—State educational agency.
300.137 Procedures for consultation.

Sec.
300.138 Other Federal programs.
300.139 Comprehensive system of personnel development.
300.140 Private schools.
300.141 Recovery of funds for misclassified children.
300.142-300.143 [Reserved]
300.144 Hearing on application.
300.145 Prohibition of commingling.
300.146 Annual evaluation.
300.147 State advisory panel.
300.148 Policies and procedures for use of Part B funds.
300.149 Description of use of Part B funds.
300.150 [Reserved]
300.151 Additional information if the State educational agency provides direct services.

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

300.180 Submission of application.
300.181 [Reserved]
300.182 The excess cost requirement.
300.183 Meeting the excess cost requirement.
300.184 Excess costs—computation of minimum amount.
300.185 Computation of excess costs—consolidated application.
300.186 Excess costs—limitation on use of Part B funds.
300.190 Consolidated applications.
300.191 [Reserved]
300.192 State regulation of consolidated applications.
300.193 State educational agency approval; disapproval.
300.194 Withholding.

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

300.220 Child identification.
300.221 Confidentiality of personally identifiable information.
300.222 Full educational opportunity goal; timetable.
300.223 Facilities, personnel, and services.
300.224 Personnel development.
300.225 Priorities.
300.226 Parent involvement.
300.227 Participation in regular education programs.
300.228 [Reserved]
300.229 Excess cost.
300.230 Nonsupplanting.
300.231 Comparable services.
300.232—300.234 [Reserved]
300.235 Individualized education program.
300.236 [Reserved]
300.237 Procedural safeguards.
300.238 Use of Part B funds.
300.239 [Reserved]
300.240 Other requirements.

APPLICATION FROM SECRETARY OF INTERIOR

Sec.
300.260 Submission of annual application; approval.
300.261 Public participation.
300.262 Use of Part B funds.
300.263 Applicable regulations.
300.262 Applicable regulations.
300.263 Applicable regulations.

PUBLIC PARTICIPATION

300.280 Public hearings before adopting an annual program plan.
300.281 Notice.
300.282 Opportunity to participate; comment period.
300.283 Review of public comments before adopting plan.
300.284 Publication and availability of approved plan.

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

300.300 Timeliness for free appropriate public education.
300.301 Free appropriate public education—methods and payments.
300.302 Residential placement.
300.303 Proper functioning of hearing aids.
300.304 Full educational opportunity goal.
300.305 Program options.
300.306 Nonacademic services.
300.307 Physical education.

PRIORITIES IN THE USE OF PART B FUNDS

300.320 Definitions of "first priority children" and "second priority children."
300.321 Priorities.
300.322 First priority children—school year 1977-1978.
300.323 Services to other children.
300.324 Application of local educational agency to use funds for the second priority.

INDIVIDUALIZED EDUCATION PROGRAMS

300.340 Definition.
300.341 State educational agency responsibility.
300.342 When individualized education programs must be in effect.
300.343 Meetings.
300.344 Participants in meetings.
300.345 Parent participation.
300.346 Content of individualized education program.
300.347 Private school placements.
300.348 Handicapped children in parochial or other private schools.
300.349 Individualized education program—accountability.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

Sec.
300.360 Use of local educational agency allocation for direct services.
300.361 Nature and location of services.
300.370 Use of State educational agency allocation for direct and support services.
300.371 State matching.
300.372 Applicability of nonsupplanting requirement.

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

300.380 Scope of system.
300.381 Participation of other agencies and institutions.
300.382 Inservice training.
300.383 Personnel development plan.
300.384 Dissemination.
300.385 Adoption of educational practices.
300.386 [Reserved]
300.387 Technical assistance to local educational agencies.

Subpart D—Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

300.400 Applicability of §§ 300.401-300.-403.
300.401 Responsibility of State educational agency.
300.402 Implementation by State educational agency.
300.403 Placement of children by parents.

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

300.450 Definition of "private school handicapped children."
300.451 State educational agency responsibility.
300.452 Local educational agency responsibility.

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

300.500 Definitions of "consent", "evaluation", and "personally identifiable".
300.501 General responsibility of public agencies.
300.502 Opportunity to examine records.
300.503 Independent educational evaluation.
300.504 Prior notice; parent consent.
300.505 Content of notice.
300.506 Impartial due process hearing.
300.507 Impartial hearing officer.
300.508 Hearing rights.
300.509 Hearing decision; appeal.

Sec.
300.510 Adiminstrative appeal; impartial review.
300.511 Civil action.
300.512 Timeliness and convenience of hearings and reviews.
300.513 Child's status during proceedings.
300.514 Surrogate parents.

PROTECTION IN EVALUATION PROCEDURES

300.530 General.
300.531 Preplacement evaluation.
300.532 Evaluation procedures.
300.533 Placement procedures.
300.534 Reevaluation.

ADDITONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

300.540 Additional team members.
300.541 Criteria for determining the existence of a specific learning disability.
300.542 Observation.
300.543 Written report.

LEAST RESTRICTIVE ENVIRONMENT

300.550 General.
300.551 Continuum of alternative placements.
300.552 Placements.
300.553 Nonacademic settings.
300.554 Children in public or private institutions.
300.555 Technical assistance and training activities.
300.556 Monitoring activities.

CONFIDENTIALITY OF INFORMATION

300.560 Definitions.
300.561 Notice to parents.
300.562 Access rights.
300.563 Record of access.
300.564 Records on more than one child.
300.565 List of types and locations of information.
300.566 Fees.
300.567 Amendment of records at parent's request.
300.568 Opportunity for a hearing.
300.569 Result of hearing.
300.570 Hearing procedures.
300.571 Consent.
300.572 Safeguards.
300.573 Destruction of information.
300.574 Children's rights.
300.575 Enforcement.
300.576 Department.

DEPARTMENT PROCEDURES

300.580 Opportunity for a hearing.
300.581—300.588 [Reserved]
300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

Subpart F—State Administration

STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL

Sec.
300.600 Responsibility for all educational programs.

USE OF FUNDS

300.620 Federal funds for State administration.
300.621 Allowable costs.

STATE ADVISORY PANEL

300.650 Establishment.
300.651 Membership.
300.652 Advisory panel functions.
300.653 Advisory panel procedures.

Subpart G—Allocation of Funds; Reports

ALLOCATIONS

300.700 Special definition of the term State.
300.701 State entitlement; formula.
300.702 Limitations and exclusions.
300.703 Ratable reductions.
300.704 Hold harmless provision.
300.705 Within-State distribution: Fiscal year 1978.
300.706 Within-State distribution: Fiscal year 1979 and after.
300.707 Local educational agency entitlements; formula.
300.708 Reallocation of local educational agency funds.
300.709 Payments to Secretary of Interior.
300.710 Entitlements to jurisdictions.

REPORTS

300.750 Annual report of children served—report requirement.
300.751 Annual report of children served—information required in the report.
300.752 Annual report of children served—certification.
300.753 Annual report of children served—criteria for counting children.
300.754 Annual report of children served—other responsibilities of the State educational agency.
APPENDIX A—[RESERVED]
APPENDIX B—INDEX TO PART 300
APPENDIX C—NOTICE OF INTERPRETATION

AUTHORITY: Part B of the Education of the Handicapped Act, Pub. L. 91-230, Title VI, as amended, 89 Stat. 776-794 (20 U.S.C. 1411-1420) unless otherwise noted.

SOURCE: 42 FR 42476, Aug. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

NOTE: For an interpretation document affecting Part 300, see 46 FR 4912, Jan. 19,

1981. The effective date of the interpretation was deferred to March 30, 1981, at 46 FR 12495, Feb. 17, 1981. The effective date was again deferred to May 10, 1981, at 46 FR 18975, Mar. 27, 1981, and deferred until further notice at 46 FR 25614, May 8, 1981.

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

§ 300.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401 Note)

§ 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State.* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include:

(1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See §§ 300.400-300.403)

(20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 300.3 Regulations that apply to assistance to States for education of handicapped children.

(a) *Regulations.* The following regulations apply to this program of Assistance to States for Education of Handicapped Children.

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

DEFINITIONS

Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

Consent (Section 300.500 of Subpart E)
Destruction (Section 300.560 of Subpart E)
Direct services (Section 300.370(b)(1) of Subpart C)
Evaluation (Section 300.500 of Subpart E)
First priority children (Section 300.320(a) of Subpart C)
Independent educational evaluation (Section 300.503 of Subpart E)
Individualized education program (Section 300.340 of Subpart C)
Participating agency (Section 300.560 of Subpart E)
Personally identifiable (Section 300.500 of Subpart E)

Private school handicapped children (Section 300.450 of Subpart D)
Public expense (Section 300.503 of Subpart E)
Second priority children (Section 300.320(b) of Subpart C)
Special definition of "State" (Section 300.700 of Subpart G)
Support services (Section 300.370(b)(2) of Subpart C)

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 300.340-300.349 of Subpart C.

(20 U.S.C. 1401(18))

§ 300.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with §§ 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of Hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded—blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means (i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rhematic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation of emotional disturbance or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1401(1), (15))

[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and further amended at 46 FR 3866, Jan. 16, 1981]

§ 300.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1417(b))

§ 300.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to handicapped children within that State.

(20 U.S.C. 1401 (22))

§ 300.8 Local educational agency.

(a) [Reserved]

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(20 U.S.C. 1401 (8))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

> The term "native language", when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b-1(a)(2); 1401(21))

Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under § 300.505(b)(2) and § 300.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

§ 300.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 300.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 300.11 Public agency.

As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivision of the State which are responsible for providing education to handicapped children.

(20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

§ 300.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

(20 U.S.C. 1417(b))

§ 300.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or languge disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(20 U.S.C. 1401 (17))

Comment. With respect to related services, the Senate Report states:

> The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

§ 300.14 Special education.

(a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401 (16))

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401 (16))

Comment. (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in § 300.5.) The definition of "related services" (section 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

Subpart B—State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

§ 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Secretary through its State educational agency.

(20 U.S.C. 1232c(b), 1412, 1413)

§ 300.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232c(b))

ANNUAL PROGRAM PLANS—CONTENTS

§ 300.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 300.127(a)(1) of this subpart; and

(4) Establishes timeliness for implementing the policy, in accordance with § 300.122.

(20 U.S.C. 1412(1)(2)(B), (6); 1413(a)(3))

§ 300.122 Timeliness and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timeliness.* Each annual program plan must include a copy of each statute, court order, attorney general decision, an other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this secton.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B))

§ 300.123 Full educational opportunty goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(20 U.S.C. 1412(2)(A))

§ 300.124 Full educational opportunity goal—data requirement.

Beginning with school year 1978-1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public private institutions who are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))

Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition". For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in § 300.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Secretary in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

§ 300.125 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) *Content of timetable.* (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and intinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraphs (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale.* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))

§ 300.127 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 300.320-300.324 of Subpart C.

(2) The State priorities meet the timelines under § 300.122 of this subpart, and

(3) The State has made progress in meeting those timeliness.

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in §§ 300.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in § 300.124(e)(2) of this subpart.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3))

§ 300.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C))

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in §§ 300.560-300.576.

§ 300.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560-300.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94-142. Those regulations are incorporated in § 300.560-300.576 of Subpart E.

§ 300.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4))

§ 300.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in §§ 300.500-300.514 of Subpart E are met.

(20 U.S.C. 1412(5)(A))

§ 300.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 300.550-300.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §§ 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5)(B))

§ 300.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 300.530-300.534 of Subpart E are met.

(10 U.S.C. 1412(5)(C))

§ 300.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in § 300.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6))

§ 300.135 [Reserved]

§ 300.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(20 U.S.C. 1412(6))

§ 300.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7)(A))

§ 300.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2))

§ 300.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under §§ 300.380-300.387 of Subpart C.

(20 U.S.C. 1413(a)(3))

§ 300.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a)(4))

§ 300.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611 (a) or (d) of the Act.

(20 U.S.C. 1413(a)(5))

§ 300.142-300.143 [Reserved]

§ 300.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1413(a)(8))

§ 300.145 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Secretary that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a)(9))

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76, Subpart F (Cash Depositories))

§ 300.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectivesness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11))

§ 300.147 State advisory panel.

Each annual program plan must provide that the requirements of §§ 300.650-300.653 of Subpart F are met.

(20 U.S.C. 1413(a)(12))

§ 300.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part

B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(20 U.S.C. 1413(a)(1))

§ 300.149 Description of use of Part B funds.

(a) *State allocation.* Each annual program plan must include the following information about the State's use of funds under § 300.370 of Subpart C and § 300.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under § 300.360 of Subpart C.

(20 U.S.C. 1232c(b)(1)(B)(ii))

§ 300.150 [Reserved]

§ 300.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under §§ 300.226-300.228, 300.231, and 300.235.

(20 U.S.C. 1413(b))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

§ 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a))

§ 300.181 [Reserved]

§ 300.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(20 U.S.C. 1414 (a)(1), (a)(2)(B)(i))

§ 300.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under § 300.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(20 U.S.C. 1402(20); 1414(a)(1))

Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this forumula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of Part B (priorities, etc.). In the "Comment" under § 300.184, there is an example of how the minimum amount is computed.

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under § 300.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special educational needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under § 300.183. This example follows the formula in § 300.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped elementary school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	−500,000
Total expenditures for elementary school students (less capital outlay and debt service)	= 10,500,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educaional needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local edcational agency actually spent, not funds received last year but carried over for the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	$300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000

(4) From State funds for the education of handicapped children	500,000
(5) From a locally-funded program for handicapped children	250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: Handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$$\begin{array}{r} \$10{,}000{,}000 \\ -\ 1{,}600{,}000 \\ \hline 8{,}400{,}000 \end{array}$$

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8.400,000/7,000 students = $1,200/student

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(1))

§ 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-supplanting and other requirements of this part in providing the education and services.

(20 U.S.C. 1402(20); 1414(a)(1))

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(20 U.S.C. 1414(c)(1))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 612 (1)-(7) and section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B))

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(C))

§ 300.193 State educational agency approval; disapproval.

(a)-(b) [Reserved]

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under §§ 300.506-300.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under § 300.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in § 300.592.

(20 U.S.C. 1414(b)(2))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

§ 300.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A))

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in §§ 300.560-300.576 of Subpart E.

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in §§ 300.560-300.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B))

§ 300.222 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1) (C), (D))

§ 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 300.222.

(20 U.S.C. 1414(a)(1)(E))

§ 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under § 300.140.

(20 U.S.C. 1414(a)(1)(C)(i))

§ 300.225 Priorities.

Each application must include priorities which meet the requirements of §§ 300.320-300.324.

(20 U.S.C. 1414(a)(1)(C)(ii))

§ 300.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under § 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii))

§ 300.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with §§ 300.550-300.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv))

§ 300.228 [Reserved]

§ 300.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under § 300.184 and which are directly attributable to the education of handicapped children.

(20 U.S.C. 1414(a)(2)(B))

§ 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(20 U.S.C. 1414(a)(2)(B))

Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Secretary looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in § 300.230(b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

§ 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(20 U.S.C. 1414(a)(2)(C))

Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 300.320-300.324.

§§ 300.232—300.234 [Reserved]

§ 300.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with §§ 300.340-300.349 of Subpart C.

(20 U.S.C. 1414(a)(5))

§ 300.236 [Reserved]

§ 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 300.500-300.514 of Subpart E.

(20 U.S.C. 1414(a)(7))

§ 300.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a))

§ 300.239 [Reserved]

§ 300.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under §§ 300.120-300.151.

(20 U.S.C. 1414(a)(6))

APPLICATION FROM SECRETARY OF INTERIOR

§ 300.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with § 300.601; and

(c) Includes other material as agreed to by the Secretary and the Secretary of Interior.

(20 U.S.C. 1411(f))

§ 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with §§ 300.280-300.284.

(20 U.S.C. 1411(f))

§ 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under §§ 300.320-300.324 of Subpart C.

(20 U.S.C. 1411(f))

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

§ 300.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7))

§ 300.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7))

§ 300.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7))

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 300.300 Timeliness for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nonhandicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under § 300.321.

2. In order to be in compliance with § 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other ap-

plicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§ 300.320-300.324.

§ 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(20 U.S.C. 1401 (18); 1412(2)(B))

§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

§ 300.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(20 U.S.C. 1412(2)(B))

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

> In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No. 95-381, p. 67 (1977))

§ 300.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under §§ 300.320-300.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under §§ 300.320-300.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

> The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been un-

teachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. therefore, in light of the national policy concerning the use of museums in Federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Senate Report No. 94-168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to non-handicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefits fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under §§ 300.320-300.324.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) *Regular physical education.* Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6))

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school sys-

tems, they are often viewed as a luxury for handicapped children.

* * * * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report No. 94-332, p. 9 (1975))

PRIORITIES IN THE USE OF PART B FUNDS

§ 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 300.321-300.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under § 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(20 U.S.C. 1412(3))

Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds or fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE: The term "free appropriate public education," as defined in § 300.4 of Subpart A, means "special education and related services which * * * are provided in conformity with an individualized education program * * *."

New "First priority children" will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all handicapped children.

§ 300.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B or the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 300.620.

(20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975))

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

§ 300.322 First priority children—school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(20 U.S.C. 1411 (b), (c))

Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an inservice training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

§ 300.323 Services to other children.

If a State or a local educational agency is providing free appropriate public education to all of its first priority children, that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341-300.349.

(20 U.S.C. 1401(19))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4))

Comment. This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975))

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the

meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5))

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975))

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B))

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A))

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

§ 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 300.220-300.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under §§ 300.182-300.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For Example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

§ 300.361 Nature and location of services.

The State educational agency may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provisions in §§ 300.550-300.556 of Subpart E).

(20 U.S.C. 1414(d))

§ 300.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under §§ 300.320-300.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under §§ 300.380-300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2), (c)(2))

§ 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B))

Comment. The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.706(a) of Subpart G for administration, direct services, or support services.

(20 U.S.C. 1411(c)(3))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 300.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in § 300.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3))

§ 300.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the state which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under § 300.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3))

§ 300.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) *Specify*: (i) The funding sources to be used, and

(ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3))

§ 300.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(20 U.S.C. 1413(a)(3))

§ 300.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel devel-

opment and instructional programming.

(20 U.S.C. 1413(a)(3))

§ 300.385 Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3))

§ 300.386 [Reserved]

§ 300.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3))

Subpart D—Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.400 Applicability of §§ 300.401-300.403.

Sections 300.401-300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B))

§ 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized education program which meets the requirements under §§ 300.340-300.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B))

§ 300.402 Implementation by State educational agency.

In implementing § 300.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B))

§ 300.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§ 300.500-300.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415)

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.450 Definition of "private school handicapped children."

As used in §§ 300.451-300.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 300.400-300.403.

(20 U.S.C. 1413(a)(4)(A))

[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.451 State educational agency responsibility.

The State educational agency shall insure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements in 34 CFR 76.651-76.663 of EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))

[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(Sec. 1413(a)(4)(A); 1414(a)(6))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 300.500 Definitions of "consent", "evaluation", and "personally identifiable".

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.,

"Evaluation" means procedures used in accordance with §§ 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 300.500-300.514.

(20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 300.562-300.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under § 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2) (i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510-300.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraphs (c) (1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

§ 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416(b)(2))

Comment: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

§ 300.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1414(b)(2))

§ 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 300.512.

(20 U.S.C. 1415 (c), (d); H. Rep. No. 94-664, at p. 49 (1975))

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508, relating to hearings, also apply.

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 300.510 has the right to bring a civil action under section 615(e)(2) of the Act.

(20 U.S.C. 1415)

§ 300.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415)

§ 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3))

Comment. Section 300.513 does not permit a child's placement to be chaged during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in § 300.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely

because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B))

PROTECTION IN EVALUATION PROCEDURES

§ 300.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C))

§ 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 300.532.

(20 U.S.C. 1412(5)(C))

§ 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in §§ 300.550-300.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with §§ 300.340-300.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5))

Comment. Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 300.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with §§ 300.340-300.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under § 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

§ 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 300.532, each public agency shall include on the multidisciplinary evaluation team:

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separage statement presenting his or her conclusions.

(20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

LEAST RESTRICTIVE ENVIRONMENT

§ 300.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 300.550-300.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under § 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B))

§ 300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement: (1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under § 300.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B))

Comment. Section 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parent's right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B))

Comment. Section 300.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR Part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that § 300.550 is effectively implemented.

(20 U.S.C. 1412(5)(B))

Comment. Under section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing § 300.550, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(20 U.S.C. 1412(5)(B))

CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 300.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable re-

quests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.570 Hearing procedures.

A hearing held under § 300.568 of this subpart must be conducted according to the procedures under § 99.22 of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Under § 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).

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§ 300.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

§ 300.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2)(D); 1417(c))

§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. section 552a (b) (1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

DEPARTMENT PROCEDURES

§ 300.580 Opportunity for a hearing.

The Secretary gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under § 300.113 of Subpart B.

(b) Withholding payments from a State under § 300.590 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under § 300.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416)

§§ 300.581-300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See § 300.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for lo-

cating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information which the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under §§ 300.580-300.583 with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

Subpart F—State Administration

STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL

§ 300.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring;

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6))

Comment. The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:

> This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.
>
> Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all

educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

USE OF FUNDS

§ 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under § 300.704 or § 300.705, as the case may be.

(20 U.S.C. 1411 (b), (c))

§ 300.621 Allowable costs.

(a) The State educational agency may use funds under § 300.620 of this subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under § 300.620 in accordance with § 300.370 of Subpart C.

(20 U.S.C. 1411 (b), (c))

STATE ADVISORY PANEL

§ 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12))

§ 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(20 U.S.C. 1413(a)(12))

Comment. The membership of the State advisory panel, as listed in paragraphs (a) (1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various di-

mensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618.

(20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(20 U.S.C. 1413(a)(12))

Subpart G—Allocation of Funds; Reports

ALLOCATIONS

§ 300.700 Special definition of the term State.

For the purposes of § 300.701, § 300.702, and §§ 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978—5 percent,

(2) 1979—10 percent,

(3) 1980—20 percent,

(4) 1981—30 percent, and

(5) 1982, and for each fiscal year after 1982, 40 percent.

(20 U.S.C. 1411(a)(1))

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701 of this subpart, the Secretary may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(2) [Reserved]

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5))

[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.* (1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in § 300.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1))

§ 300.705 Within-State distribution: Fiscal year 1978.

Of the funds received under § 300.701 of this subpart by any State for fiscal year 1978:

(a) 50 percent may be used by the State in accordance with the provisions of § 300.620 of Subpart F and § 300.370 of Subpart C, and

(b) 50 percent shall be distributed to local educational agencies in the State in accordance with § 300.707.

(20 U.S.C. 1411(b)(1))

§ 300.706 Within-State distribution: Fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with § 300.620 of Subpart F and § 300.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with § 300.707.

(20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under § 300.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e))

§ 300.709 Payments to Secretary of Interior.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(20 U.S.C. 1411(f)(1))

§ 300.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e))

REPORTS

§ 300.750 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Secretary no later than February 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(20 U.S.C. 1411(a)(3))

(b) The State educational agency shall submit the report on forms provided by the Secretary.

(20 U.S.C. 1411(a)(3))

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on December 1 of that school year;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in § 300.5 of Subpart A; and

(3) The number of those handicapped children within each of the following age groups:

(i) Three through five;

(ii) Six through seventeen; and

(iii) Eighteen through twenty-one.

(b) A child must be counted as being in the age group corresponding to his or her age of the date of the count: December 1.

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

(c) The State educational agency may not report a child under more than one disability category.

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.752 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b) of Subpart B.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.751 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Secretary to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

Appendix A—[Reserved]

Appendix B—Index to Part 300

ADMINISTRATION

See: Monitoring.
Annual program plan requirements—§§ 300.112; 300.134; 300.138; 300.141; 300.142; 300.145.
Certification of State authority—§ 300.112.
Direct Service by State educational agency—§ 300.360.
Local application requirements §§ 300.228; 300.236; 300.240.
Local education agency definition—§ 300.8.

ADMINISTRATION—Continued

State administration—Subpart F.

ADVISORY PANEL (STATE)

Annual program plan requirement—§ 300.147.
General requirements—§§ 300.650-300.653.

ALLOCATIONS

Annual program plan condition of assistance—§ 300.110.
Application by local agency condition of assistance—§ 300.180.
Consolidated applications—§ 300.191.
Count of children—See Reports.
Interior Department for Indian children—§ 300.709.
Local agency allocation—See Reports.
  Formula—§§ 300.705-300.707.
  Reallocation—§ 300.708.
  Use by the State—§ 300.360.
Outlying areas—§ 300.710.
Recovery for misclassified children—§ 300.141.
State allocation:
  Formula—§§ 300.701-300.703; 300.705-300.706.
  Hold harmless——§ 300.704.
  Use for administration—§§ 300.620-300.621.
Use of—See other headings.
Withholding—See: Hearings.
  From the local agency—§ 300.194.
  From the State—§§ 300.590-300.593.

ANNUAL PROGRAM PLAN

Approval; disapproval—§ 300.113.
Certifications—§ 300.112.
Condition of assistance to State—§ 300.110.
Contents—§§ 300.111; 300.112; 300.120-300.151.
Effective period—§ 300.114.
General requirements—§§ 300.110-300.114.
Public participation—See: Public Participation.
Submission by State—§ 300.110.

APPLICABILITY OF REGULATIONS—§ 300.2

APPLICATION BY LOCAL AGENCY

Annual program plan requirement—§ 300.144.
Approval or disapproval by State educational agency——§§ 300.193; 300.360.
Second priority children—amendment of application—§ 300.324.
Submission by local agency—§ 300.180.
Condition of assistance to local agency—§ 300.180.
Consolidated application—§§ 300.190-300.192.
Content—§§ 300.220-300.240.
Excess costs—See: Excess Costs.
Public participation—See Public Participation.

AUDITS

See: Monitoring.

COMPLAINTS

State educational agency procedures—§ 300.602.
See: Hearings.

COMPARABLE SERVICES

Local application requirement—§ 300.231.

CONSENT

Defined—§ 300.500.
Disclosure of information—§ 300.571.
Initial placement—§ 300.504(b).
Placement status during a proceeding—§ 300.513.
Preplacement evaluation of child—§ 300.504(b).

CONFIDENTIALITY OF INFORMATION

Annual program plan requirement—§ 300.129.
Definitions—§ 300.560.
General requirements—§§ 300.560-300.572.
Local application requirements—§ 300.221.

CONSOLIDATED APPLICATIONS

See: Application of local agency.

COUNT OF CHILDREN

Annual report of children served—§§ 300.750-300.754.
Allocations:
  State entitlement—§§ 300.701-300.702.
  Local educational agency entitlement—§ 300.707.
Outlying areas entitlements—§ 300.710.

DEFINITIONS—§§ 300.4-300.15

DUE PROCESS

See: Confidentiality of Information.
  Evaluation.
  Hearings.
  Notice.
Procedures for parents and children—§§ 300.500-300.514.

EDUCATION

See: Free Appropriate Public Education.
  Full Educational Opportunity Goal.
  Individualized Education Program.
  Personnel Development.
  Physical Education.
  Special Education.
  Related Services.

EVALUATION

Advisory panel function—§ 300.652.
Annual program plan requirements—§§ 300.128; 300.133; 300.146.
Education programs—§ 300.146.

EVALUATION—Continued

Handicapped children:
  Consent required for—§ 300.504.
  Defined—§ 300.500.
  Hearings—See: Hearings.
  Independent educational evaluation—§ 300.503.
  Information on achievement—§ 300.232.
  Notice required—§§ 300.504-300.505.
  Protection—§§ 300.129, 300.133, 300.221, 300.530-300.534.
  State responsibility—§ 300.128.
Hearing aids—§ 300.303.
Individualized education programs—§ 300.146.
Personnel development—§ 300.386.
Private school children service needs—§ 300.453.
State educational agency activities—§§ 300.146; 300.601.
Training—See: Personnel development, this heading.

EXCESS COSTS

Generally—§§ 300.182-300.186.
Local application requirement—§ 300.229.
Not applicable to State educational agency—§ 300.360.

FREE APPROPRIATE PUBLIC EDUCATION

See: Individualized Education Programs.
    Related Services.
    Special Education.
    Time Limits and Timetables.
Annual program plan requirements—§§ 300.121-300.122.
Defined—§ 300.4.
Generally—§§ 300.300-300.303; 300.307.
Initiation or change—See: Notice.
State practice exception—§ 300.300.
State use of local agency's allocation—§ 300.360.
Priorities—§§ 300.320-300.324.

FULL EDUCATIONAL OPPORTUNITY GOAL

Annual program plan requirements—§§ 300.123-300.126.
General requirements—§§ 300.304-300.306.
Local application requirements—§§ 300.222-300.223.

HANDICAPPED CHILDREN

Defined—§ 300.5.
Rights
See: Confidentiality of Information.
    Due Process.
    Evaluation.
    Free Appropriate Public Education.
    Hearing.
    Identification, Location, Evaluation.
    Individualized Education Program.
    Least Restrictive Environment.
    Notice.
    Private School Children.
    Special Education.
    Related Services.

HEARINGS

Disapproval of annual program plan—§ 300.113.
Disapproval of local application—§ 300.194.
Department procedures—§§ 300.580-300.593.
Parents and children:
  Identification, evaluation, placement—§§ 300.506-300.514.
  Confidentiality of information—§§ 300.568-300.570.
Public hearings before adopting annual program plan—§§ 300.280-300.284.
Withholding payments from a State—§ 300.590.

IDENTIFICATION, LOCATION, EVALUATION

See: Evaluations.
Annual program plan requirement—§ 300.128.
Local application requirement—§ 300.220.
Private school children—§ 300.453.

INDIAN CHILDREN

Application from Secretary of Interior—§§ 300.260-300.263.
Count—§ 300.753.
Payments to Secretary of Interior—§ 300.709.

INDIVIDUALIZED EDUCATION PROGRAM

Accountability—§ 300.349.
Annual program plan requirement—§ 300.130.
Content—§ 300.346.
Defined—§ 300.340.
Effective dates—§ 300.342.
First priority children—§ 300.322.
Free appropriate public education definition—§ 300.4.
General requirements—§§ 300.340-300.349.
Least restrictive environment—§ 300.552.
Local application requirement—§ 300.235.
Meetings—§§ 300.343-300.345.
Parent participation—§ 300.344.
Placement—§§ 300.533; 300.552.
Private school children—§§ 300.347-300.248; 300.401.
Reevaluation—§ 300.534.

LEAST RESTRICTIVE ENVIRONMENT

Annual program plan requirement—§ 300.132.
General requirements—§§ 300.550-300.556.
Local application requirement—§ 300.227.
Nature and location of State services—§ 300.361.
Nonacademic services and settings—§§ 300.306; 300.553.
Physical education—§ 300.307.
Placement decisions—§§ 300.513; 300.533.
Program options—§ 300.305.

MATCHING—§ 300.371

MONITORING

Annual program plan requirements—§§ 300.128(b)(5); 300.130(b)(2); 300.135.
Auditing count of children served—§ 300.754.
Confidentiality of information—§ 300.575.
Identification, location, evaluation—§ 300.128(b)(5).
Individualized education programs—§ 300.130(b)(2).
Least restrictive environment—§ 300.556.
Private school children—§ 300.402(a).
State educational agency responsibility—§ 300.601.

NONDISCRIMINATION

Annual program requirement—§ 300.150.
Evaluation materials and procedures—§ 300.530.
Local application requirement—§ 300.239.
Nonacademic services—§ 300.306.
Private school children—§ 300.458.
Program options—§ 300.305.
Testing materials and procedures—§ 300.530.

NOTICE

Confidentiality of information—§§ 300.561, 300.573.
Individualized education program meeting—§ 300.345.
Initiation or change of identification, evaluation, placement, or free appropriate public education—§§ 300.504-300.505.
Notice of opportunity for a hearing—See: Hearings.
Notice of procedural safeguards—§ 300.505.
Public notice of withholding payments—§ 300.592.

PERSONNEL DEVELOPMENT

Annual program plan requirement—§ 300.139.
Comprehensive system of personnel development—§§ 300.380-300.387.
Included in State support services—§ 300.370.
Least restrictive environment—§ 300.555.
Local application requirement—§ 300.224.
Personnel needs—§§ 300.126; 300.223.
Preservice training—§ 300.321.
Trained personnel for evaluation materials—§ 300.532.
Training regarding confidentiality of information—§ 300.572.
Use of Part B funds for training—§§ 300.321, 300.322.

PHYSICAL EDUCATION

Included in special education—§ 300.14.
Required—§ 300.307.

PLACEMENTS

See: Evaluation.
  Least Restrictive Environment.
  Private schools.

PRIORITIES

See: Evaluation.
  Identification, Location, Evaluation.
Annual program plan requirement—§ 300.127.
Definitions:
  First priority children—§ 300.320(a).
  Second priority children—§ 300.320(b).
General requirements—§§ 300.320-300.324.
Local application requirement—§ 300.225.
State direct and support services—§ 300.370.

PRIVATE SCHOOL CHILDREN

Annual program plan requirement—§ 300.140.
Confidentiality of information—§ 300.560.
Cost of residential placement—§ 300.302.
Handicapped children placed or referred by public agencies—§§ 300.400-300.403.
Handicapped children not placed or referred by public agencies—§§ 300.450-300.460.
Individualized education program—§§ 300.347-300.348.
Least restrictive environment—§ 300.554.
Part B applicability to private schools—§ 300.2.
Physical education—§ 300.307.

PROCEDURAL SAFEGUARDS

See: Complaints.
  Consent.
  Hearings.
  Notice.
  Surrogate Parents.
Annual program plan requirements—§§ 300.131; 300.136.
Local application requirement—§ 300.237.

PUBLIC PARTICIPATION

See: Hearings.
Annual program plan requirements—§§ 300.120; 300.137; 300.280-300.284.
Local application requirements—§§ 300.226; 300.234.
Secretary of Interior application—§ 300.261.
State advisory panel—§§ 300.650-300.654.

RECORDS

See: Confidentiality of Information.
Annual program plan requirement—§ 300.143.
Comparable services—§ 300.231.
Count of children served—§ 300.754.
Excess costs—§ 300.183.
Individualized education programs—§ 300.130.
Local application requirement—§ 300.233.
Parents may examine—§§ 300.502; 300.562.
Parents not participating in meetings—§ 300.345.

RELATED SERVICES

See: Free Appropriate Public Education.
  Individualized Education Program.
Defined—§ 300.13.

REPORTS

Annual report of children served—§§ 300.750-300.754.
Local application requirements—§§ 300.232; 300.233.
State advisory panel—§ 300.652.

SPECIAL EDUCATION

See: Free Appropriate Public Education.
  Individualized Education Program.
Defined—§ 300.14.

STATE ADVISORY PANEL

Annual program plan requirement—§ 300.147.
General requirements—§§ 300.650-300.653.

STATE DIRECT AND SUPPORT SERVICES

Annual program plan requirement—§ 300.51.
General requirements—§§ 300.360-300.372.

SUPPLANTING

Applicability to State educational agency—§ 300.372.
Local application requirement—§ 300.230.
Private schools—§ 300.460.
Waiver of requirement—§ 300.589.

SURROGATE PARENTS

Definition of parent—§ 300.10.
Duty of public agency to assign—§ 300.514.
Responsibilities—§ 300.514.
Selection—§ 300.514.

TESTING

See: Evaluation.

TIME LIMITS AND TIMETABLES

Annual program plan effective period—§ 300.114.
Evaluation of educational programs—§ 300.146.
Free appropriate public education—§§ 300.122; 300.300.
Full educational opportunity goal—§§ 300.125; 300.222.
Hearing decisions—§§ 300.512; 300.583.
Individualized education programs—§§ 300.342; 300.343.
Public participation in the annual program plan—§ 300.280-300.284.
Reevaluation—§ 300.534.
Report of children served—§ 300.750-300.754.
State monitoring of public agencies—§ 300.601.
State review of hearing decision—§ 300.512.

TRAINING

See: Personnel Development.

USE OF PART B FUNDS

Allocation formulas:
  Consolidated applications—§§ 300.190-300.191.
  Entitlements—§§ 300.700-300.710.
Annual program plan requirements—§§ 300.148; 300.149.
Department of the Interior (Indian children)—§ 300.262.
Excess costs—§§ 300.182-300.186.
Local application requirement—§ 300.238.
State and local educational agencies:
  Free appropriate public education—§§ 300.301-300.302.
  Full educational opportunity goal—§ 300.304(b).
  Priorities—§§ 300.320-300.324.
  Private school children—§§ 300.450-300.460.
State educational agencies:
  Allowable costs—§ 300.621.
  Federal funds for State administration—§ 300.620.
  Matching—§ 300.371.
  State advisory panel—§ 300.652.
  Use of local allocation for direct services—§§ 300.360-300.361.
  Use of State educational agency allocation for direct and support services—§ 300.370.
Supplanting—§§ 300.230; 300.372; 300.589.
Training—See: Personnel Development.

APPENDIX C—NOTICE OF INTERPRETATION

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ *300.343 Meetings*

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ *300.344 Participants in meetings*

(Agency representative)

13. Who can serve as the "representative of the public agency" at an IEP meeting?

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a handicapped child attend an IEP meeting?

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ *300.345 Parent participation*

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ *300.346 Content of the individualized education program*

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term objectives)

37. Why are goals and objectives required in the IEP?
38. What are "annual goals" in an IEP?
39. What are "short term instructional objectives" in an IEP?
40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?
41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?
42. When must IEP objectives be written—before placement or after placement?
43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?
45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?
46. Must the public agency itself directly provide the services set out in the IEP?
47. Does the IEP include only special education and related services or does it describe the total education of the child?
48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?
49. When must physical education (PE) be described or referred to in an IEP?
50. If a handicapped child is to receive vocational education, must it be described or referred to in the student's IEP?
51. Must the IEP specify the amount of services or may it simply list the services to be provided?
52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?
54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?
56. Is there a prescribed format or length for an IEP?
57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?
58. What provisions on confidentiality of information apply to IEPs?

§ *300.347 Private school placements*

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ *300.348 Handicapped children in parochial or other private schools*

§ *300.349 Individualized education programs—accountability*

60. Is the IEP a performance contract?

Authority: Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411-1420), unless otherwise noted.

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INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

Interpretation of Requirements Under Part B of the Education of the Handicapped Act, As Amended by Pub. L. 94-142

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

NOTE: The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See § 300.349, *Individualized education program—accountability.*

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340-300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341-300.349.

(20 U.S.C. 1401(19).)

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

NOTE: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situa-

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tion that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

NOTE: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

NOTE: The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), *Placements.*)

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

NOTE: The IEP must be developed before the child is placed. See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

NOTE: The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975).)

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under **§ 300.343.** An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following § 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note: Section 300.346(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timeliness for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

NOTE: Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37-43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

NOTE: The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

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§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2) (B), (4), (6); 1414(a) (5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

7. *What is the purpose of the 30 day timeline in § 300.343(c)?*

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting.

NOTE: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. *Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?*

Paragraph (e) of § 300.532 (*Evaluation procedures*) provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

NOTE: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

NOTE: If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. *Must IEPs be reviewed or revised at the beginning of each school year?*

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. *How frequently must IEP meetings be held and how long should they be?*

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. *Who can initiate IEP meetings?*

IEP meetings are initiated and conducted at the descretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

NOTE: Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. *May IEP meetings be tape-recorded?*

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record", within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA-B (34 CFR 300.560-.565).

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to **§ 300.345**.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

NOTE: In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA-B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under § 300.345(b)—that they may invite their child to participate.

NOTE: The parents and agency should encourage older handicapped children (particularly those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

NOTE: This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following § 300.532 (*Evaluation procedures*) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a) (1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

26. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

NOTE: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA-B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, *Surrogate parents.*)

28. *Must the public agency let the parents know who will be at the IEP meeting?*

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

Note: A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement which meets the definition of "consent" in § 300.500:

> "Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *
>
> (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
>
> (c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

Note: The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504-300.505), it would not be necessary for the agency to do so again at the IEP meeting.

- Section 300.504(a) of the regulations states that "written notice which meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."
- Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (§§ 300.500-300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences though the due process procedures under the Act.

NOTE: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506. *Impartial due process hearing.*)

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. *Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?*

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school presonnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following: (1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. *If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?*

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under EHA-B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

NOTE: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service *would* continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§ 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

36. *What should be included in the statement of the child's present levels of educational performance?*

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

NOTE: Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. *Why are goals and objectives require in the IEP?*

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. *What are "annual goals" in an IEP?*

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. *What are "short term instructional objectives" in an IEP?*

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

NOTE: See Question 56, below, regarding the length of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. *Must the IEP include all special education and related services needed by the child or only those available from the public agency?*

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?*

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and resposibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See §§ 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education

NOTE: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

NOTE: The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

NOTE: Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA-B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

NOTE: The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of * * * the extent to which the child will be able to particpate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

NOTE: If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

NOTE: In many instances, these components are incorporated directly into the objectives.

OTHER QUESTIONS ABOUT THE CONTENT OF AN IEP

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommmendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47-50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

NOTE: In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided*, That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA-B (Section 617(c) of the Act; §§ 300.560-300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

NOTE: Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests * * *" in that information.

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. It both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

NOTE: The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

60. *Is the IEP a performance contract?*

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

[46 FR 5461, Jan. 19, 1981]

PART 301—INCENTIVE GRANTS

Sec.

301.1 Scope; purpose.
301.2 Regulations that apply to the Incentive Grants Program.
301.3 Eligibility.
301.4 Application.
301.5 Application contents.
301.6 Amount of grant.
301.7 Allowable expenditures.
301.8 Excess costs.

AUTHORITY: Sec. 619 of Pub. L. 91-230, as amended, 89 Stat. 793 (20 U.S.C. 1419), unless otherwise noted.

SOURCE: 42 FR 42517, Aug. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 301.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Secretary awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meanings defined in § 300.12 and § 300.13 of this chapter.

(20 U.S.C. 1419(c))

§ 301.2 Regulations that apply to the Incentive Grants Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 301.

(3) The definitions in Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to

Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 301.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Secretary has approved its annual program plan under Part 300 of this chapter; and

(b) The State provides special education and related services to any handicapped children aged three, four, or five.

(20 U.S.C. 1419(a))

§ 301.4 Application.

To receive funds under this part, a State must submit an application to the Secretary through its State educational agency.

(20 U.S.C. 1419(b))

§ 301.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under § 300.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section

(20 U.S.C. 1419(b))

§ 301.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 300.750-300.754 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(20 U.S.C. 1419 (a), (d))

§ 301.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 300.750-300.754 of this chapter if the State educational agency insures that those children have all of the rights afforded under Part 300 of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(20 U.S.C. 1419(c))

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in the understanding of the special needs of their handicapped child; (3) providing parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

§ 301.8 Excess costs.

(a) If local or State funds are available to pay for the education of nonhandicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(20 U.S.C. 1419(c))

PART 302—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

Subpart A—General

Sec.
302.1 Scope.
302.2 Regulations that apply to State Operated Programs for Handicapped Children.
302.3 Definitions.

Subpart B—State Educational Agency Participation

302.12 State educational agency as fiscal agent.
302.13 Other State educational agency responsibilities.
302.14 Reallocation of funds between State agencies.

Subpart C—State Agency Participation

302.20 State agency eligibility.
302.21 Project application requirements.
302.22 Parental participation in the development of the project application.
302.23 State agency responsibilities.
302.24 Children who may be served.
Sec.
302.25 Reporting by State agency of children transferring to a local educational agency program.

Subpart D—Local Educational Agency Participation

302.30 Local educational agency project application.
302.31 Transfer of funds to local educational agencies.
302.32 Local educational agency use of funds.
302.33 Funds attributable to children who leave the local educational agency.
302.34 Funds not used by a local educational agency.

Subpart E—Amount of Grants and Counting Average Daily Attendance

302.40 Amount of grants.
302.41 Eligibility of children to be counted.
302.42 Education by more than one agency.
302.43 Average daily attendance computation.
302.44 Dates for counting and reporting average daily attendance.
302.45 Children counted under section 123.
302.46 Children counted under Part B of the Education of the Handicapped Act.

Subpart F—Program Requirements

302.50 The educational program.
302.51 State standards.
302.52 Maintenance of direction and control.
302.53 Dissemination.
302.54 Construction and equipment.
302.55 Participation of children who were not counted.
302.56 Participation in programs under Part 116a.

Subpart G—Allowable Costs

302.60 General.
302.61 Special education and related services.
302.62 Tuition and services.
302.63 Transportation costs.

Subpart H—Requirements Under Part B of the Education of the Handicapped Act

302.70 Part B regulations.
302.71 Supervision of programs for handicapped children.
302.72 Use of funds for handicapped children.
302.73 State educational agency standards.
302.74 Withholding payments for noncompliance.

AUTHORITY: Sec. 121 of Pub. L. 89-10, as amended, 88 Stat. 491-492 (20 U.S.C. 241c-1), unless otherwise noted.

SOURCE: 43 FR 16262, Apr. 17, 1978, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 302.1 Scope.

This part applies to programs and projects assisted under section 121 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 241c-1)

§ 302.2 Regulations that apply to State Operated Programs for Handicapped Children.

(a) *Regulations.* The following regulations apply to State Operated Programs for Handicapped Children:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 302.

(3) The regulations in 34 CFR Part 200 (general requirements relating to Title I of the Act) However, § 200.92 (Use of funds for services that the applicant is required to provide) does not apply.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.3 Definitions.

As used in this part (in addition to the definitions set forth in Parts 77 and 200 of this chapter):

"Handicapped children" includes those children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or other health impaired, who because of those impairments need special education.

"Related services" is used in this Part as defined in § 300.13 of this chapter.

"Special education" is used in this Part as defined in § 300.14 of this chapter.

"State agency" means an institution or agency of the State which has direct responsibility established under State law for providing free public education for handicapped children.

"State-operated school" means a school or a program which is administered directly by a State agency.

"State-supported school" means a school or program operated under contract or other arrangement with a State agency.

(20 U.S.C. 241c-1; 20 U.S.C. 1401 (16), (17))

Comment. A State agency may use funds under this part only to serve those handicapped children for whom the agency is directly responsible for providing free public education. The State agency may serve those handicapped children in State-operated or in State-supported schools. Although typically the State agency contributes a significant portion of the cost of providing education to handicapped children in a State-supported school, the extent of that contribution is irrelevant as long as the State agency is legally responsible for providing education to the handicapped children in that State-supported school.

Subpart B—State Educational Agency Participation

§ 302.12 State educational agency as fiscal agent.

The State educational agency may act as the fiscal agent of the State agency in disbursing funds under this part, including transfers of funds to local educational agencies under Subpart D of this part.

(20 U.S.C. 241c-1)

§ 302.13 Other State educational agency responsibilities.

In addition to those requirements in Part 200 of this chapter, each State educational agency shall:

(a)—(b) [Reserved]

(c) Assist State agencies and local educational agencies in determining and reporting average daily attendance of handicapped children under Subpart E of this part;

(d) Insure that all handicapped children served with funds under this part are receiving special education in a program which meets the State educational agency standards under § 302.51;

(e) Insure that the information reported under § 302.44(b) is accurate; and

(20 U.S.C. 241c-1)

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.11 Reallocation of funds between State agencies.

The State educational agency shall reallocate funds (subject to the prior written approval of the Secretary) between State agencies if a handicapped child who generated funds in one participating State agency is transferred to another participating State agency.

(20 U.S.C. 241c-1)

Subpart C—State Agency Participation

§ 302.20 State agency eligibility.

Each State agency is eligible to receive a grant under this part for each fiscal year.

(20 U.S.C. 241c-1)

§ 302.21 Project application requirements.

(a) In order to receive a grant under this part, a State agency must submit a project application to the State educational agency.

(b) A project application must:

(1) Meet the requirements in Subpart D of Part 200 of this chapter;

(2) Set forth the number of handicapped children to be served with funds under this part;

(3) Describe the nature and purpose of the proposed project and include measurable child-centered objectives;

(4) Identify each school in which the handicapped children are enrolled, the number of those children, and their ages and handicapping conditions;

(5) Describe the educational services currently being provided for handicapped children with State and local funds in each of these schools;

(6) Provide an assessment and discription of the needs of those children for special education and related services based on the best available data, including data on their past educational performance;

(7) Describe each educational service to be provided with funds under this part to meet the needs assessed and described under paragraph (b)(6) of this section;

(8) Describe any proposed training for the school staff and for the parents of those children;

(9) Describe the procedures which will be used to evaluate the effectiveness of the project;

(10) Describe the nature and extent of any proposed coordination with other Federal, State, or local agencies, or related programs, in the development, operation, and administration of the program or project assisted under this part;

(11) Provide for educational services and training for parents of those children, to the extent that parental understanding of the services being provided to their children could contribute to the effectiveness of the program or project;

(12) Describe the procedures to be used in developing and implementing the individualized education program which must be provided for each handicapped child under Part 300 of this chapter;

(13) Describe the procedures which were used to give parents of these children an opportunity to participate in the development of the project application; and

(14) Describe the methods of dissemination of project information.

(20 U.S.C. 241c-1)

§ 302.22 Parental participation in the development of the project application.

Each State agency shall provide parents of the children to be served with funds under this part with an opportunity to participate in the development of its project application.

(20 U.S.C. 241c-1; 1231d)

§ 302.23 State agency responsibilities.

Each State agency shall:

(a) Coordinate and consult with its State educational agency in the development, implementation, supervision, and evaluation of programs and projects assisted under this part; and

(20 U.S.C. 241c-1)

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.24 Children who may be served.

A State agency may use funds under this part only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children for whom the State agency is directly responsible for providing free public education.

(20 U.S.C. 241c-1)

§ 302.25 Reporting by State agency of children transferring to a local educational agency program.

(a) Each State agency which receives funds under this part shall submit an annual report to the State educational agency of all handicapped children who:

(1) Were counted in average daily attendance under section 121 of the Act during the school year 1971-1972 or in a subsequent year; and

(2) Will leave or have left the special education program operated or supported by that agency in order to participate in a special education program operated or supported by a local educational agency.

(b) The State educational agency shall prescribe the manner of submitting the report.

(c) Each State agency shall insure that the report includes:

(1) The name of each child (or other information used by the State to identify the child),

(2) A description of each child's handicapping condition (or other information used by the State to identify the handicapping condition), and

(3) The name of the local educational agency in which the child will enroll.

(20 U.S.C. 241c-1)

Subpart D—Local Educational Agency Participation

§ 302.30 Local educational agency project application.

(a) In order to receive funds under this part, a local educational agency must submit a project application to the State educational agency.

(b) The application must meet the requirements in § 302.21 and include any other information the State educational agency requires to perform its duties under this part.

(c) The State educational agency may reduce the amount of information submitted under § 302.21, if the local educational agency serves five or fewer handicapped children under this part.

(20 U.S.C. 241c-1)

§ 302.31 Transfer of funds to local educational agencies.

A local educational agency may receive funds under this part to serve a handicapped child if:

(a) The handicapped child left an educational program for handicapped children operated or supported by a State agency in order to participate in a program operated or supported by the local educational agency;

(b) The child continues to receive an appropriately designed educational program; and

(c) The State agency transfers the funds generated by the child under this part to the local educational agency.

(20 U.S.C. 241c-1)

Comment. 1. Under the statute, it is the responsibility of the State agency to transfer funds to a local educational agency. However, under § 302.12, the State educational agency may transfer the funds directly to the local educational agency as the fiscal agent of the State agency.

2. The local educational agency receives funds based on the number of transfer children that it serves. Subpart E provides the rules for counting these children. The local educational agency submits its count to the State educational agency.

3. It should be noted that funds generated by the count of a child in one year are not

available until the following year. Because of this one-year delay in the availability of funds, the determination of which agency (local or State) should receive the funds can become a complex problem. The following clarifications are provided to assist in determining whether or not the transfer of funds to a local educational agency is mandatory.

(a) The local educational agency may receive all funds generated by a child whom the local educational agency counted in the previous year, subject to the compliance by the local educational agency with the requirements of this part.

(b) The State agency may (but is not required to) transfer to the local educational agency funds generated by a child whom the State agency counted in the previous year. For example, the transfer of funds is optional in the following situations:

(1) The State agency counts a child on October 1, and the child enrolls in the local educational agency following that count but during the same school year. The State agency may decide to transfer the funds to the local educational agency when those funds become available (the following year) or may decide to retain those funds for use on other counted handicapped children in that State agency. (If the local educational agency then counts the child, the following year's funds must be transferred.)

(2) The State agency counts a child on October 1 of one school year and the child enrolls in the local educational agency the following school year (the year the funds become available). The State agency may decide to transfer those funds to the local educational agency at the time of the child's enrollment in the local educational agency or may decide to retain those funds for use for other counted handicapped children in that State agency. In examples (1) and (2), uncounted handicapped children may be served on a space available basis (§ 302.55).

Although the transfer of funds to the local educational agency is optional under the examples in paragraph (b) above, the State agency may wish to take into account the following in exercising its option: whether or not the State agency continues to maintain approved projects, the number of children who have left the State agency and who are currently enrolled in a local educational agency, and the number of children in approved projects in the State agency.

(c) If a child has left the local educational agency, § 302.33 governs the use of the funds.

§ 302.32 Local educational agency use of funds.

(a) A local educational agency which receives funds under this part shall use those funds to supplement the appropriately designed education for handicapped children provided by that agency.

(20 U.S.C. 241c-1(d))

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.33 Funds attributable to children who leave the local educational agency.

(a) The State agency shall not transfer funds to a local educational agency if all handicapped children counted under this part cease to be enrolled in that local educational agency.

(b) If a handicapped child counted under this part ceases to be enrolled in the local educational agency, that local educational agency shall notify the State educational agency, and the State educational agency shall require the local educational agency to either:

(1) Retain funds generated by that child under this part to be used for the other handicapped children enrolled in that local educational agency; or

(2) Return all or a portion of those funds to a State agency in which that child was formerly enrolled.

(20 U.S.C. 241c-1(d))

§ 302.34 Funds not used by a local educational agency.

If a local educational agency is unable or unwilling to use all or part of the funds available to it under this part, the State educational agency shall transfer the funds to the State agency in which the handicapped children counted under this part were formerly enrolled.

(20 U.S.C. 241-1 (c) and (d))

Subpart E—Amount of Grants and Counting Average Daily Attendance

§ 302.40 Amount of grants.

(a) *Formula for determining the amount of grant.* A State agency is eligible to receive an amount of funds as computed under the formula in section 121(b) of the Act.

(20 U.S.C. 241c-1(b))

(b) *Minimum payment.* In any fiscal year prior to October 1, 1978, no State shall receive an amount of funds under this part which is less than 100 percent of the amount which that State received in the prior fiscal year under section 121 of the Act.

(20 U.S.C. 241c-5)

§ 302.41 Eligibility of children to be counted.

(a) A handicapped child may be counted in average daily attendance for the purpose of computing a grant under section 121(b) of the Act, if:

(1) The child is on the membership roll of a State-operated school,

(2) The child is on the membership roll of a State-supported school; or

(3) (i) The child was counted in average daily attendance by a State agency during the school year 1971-1972 or a subsequent year and is now enrolled in a program operated or supported by a local educational agency;

(ii) The child was enrolled in the State agency school for at least one school year (which may not be less than 180 school days);

(iii) The child continues to receive an appropriately designed educational program; and

(iv) The State agency transfers to the local educational agency in whose program the child is enrolled an amount equal to the sums received by the State agency under this part which are attributable to that child.

(b) There is no minimum number of hours that a child must be receiving educational services per day in order for the child to be eligible to be placed on a membership roll under this section. The length of a school day shall be determined solely by the needs of the handicapped child, as reflected in the child's individualized education program.

(20 U.S.C. 241c-1(b))

§ 302.42 Education by more than one agency.

If a handicapped child is receiving free public education from more than one State agency, the State agency which is primarily responsible for the child's education (as determined by the State educational agency) shall be the only State agency to count that child under this part.

(20 U.S.C. 241c-1)

§ 302.43 Average daily attendance computation.

For the purposes of this part, average daily attendance means the total membership enrollment of handicapped children who are counted under § 302.41.

(20 U.S.C. 241c-1(b))

§ 302.44 Dates for counting and reporting average daily attendance.

(a) *State agency and local educational agency.* Each State agency and local educational agency shall count handicapped children (as specified in § 302.41) on their membership rolls as of October 1 of each year and shall report their average daily attendance to the State educational agency.

(b) *State educational agency.* The State educational agency shall submit a report to the Secretary by the following November 15 which sets forth the information submitted under paragraph (a) of this section.

(20 U.S.C. 241c-1 (b) and (d))

§ 302.45 Children counted under section 123.

A handicapped child who is counted in average daily attendance for the purpose of computing a grant under section 123 of the Act (program for neglected or delinquent children) may not be counted under this part.

(20 U.S.C. 241c-1(b))

§ 302.46 Children counted under Part B of the Education of the Handicapped Act.

A handicapped child who is counted for the purpose of computing a grant under Part B of the Education of the Handicapped Act may not be counted under this part.

(20 U.S.C. 241c-1(b))

Comment. Effective October 1, 1977, section 611 (a)(5)(A)(iii) of Part B of the Education of the Handicapped Act requires that children counted under this part cannot be counted under Part B. (References to other requirements of Part B are in Subpart H.) However, handicapped children who receive special education and related services from a State agency directly responsible for providing them with free public education may be counted under this Part or under Part B. In addition, handicapped children counted or eligible to be counted under this part may be served with Part B funds, if all requirements of Part B are met.

Subpart F—Program Requirements

§ 302.50 The educational program.

(a) Each handicapped child counted under this part must be provided with an educational program designed to meet the child's special educational needs.

(b) The entire amount of funds generated by a child under this part need not be spent on that child, as long as some of the funds are used to meet his or her individual special education needs. The remaining funds generated by that child may be spent on other handicapped children who are enrolled in the State-operated or State-supported school where the child is located, and who were counted under § 302.41.

(c) A project may be supported in whole or in part with funds provided under this part. However, a State agency shall not use funds under this part to pay for its entire educational program for handicapped children.

(20 U.S.C. 241 (c) and (d))

Comment. The benefits a child receives must be designed to meet the child's individualized special education needs. For example, the services of a State agency coordinator would not meet this requirement, unless the State agency can document that those services were designed to meet the child's individualized special education needs. Under Part B of the Education of the Handicapped Act, all special education and related services must be provided under an individualized education program. See §§300.340-300.349 of this chapter.

§ 302.51 State standards.

(a) The State educational agency shall have standards insuring that each handicapped child counted under this part receives an appropriately designed education.

(b) The State educational agency shall insure that every child in a State-supported school is provided an education which meets the standards of the State educational agency.

(20 U.S.C. 241c-1)

§ 302.52 Maintenance of direction and control.

Each State agency and local educational agency which provides services with funds under this part through contracts with other public or private agencies (such as hospitals, clinics, colleges, universities, and elementary and secondary schools) shall maintain those services under its administrative and supervisory direction and control. A State agency or local educational agency may not provide all those services to handicapped children through contracts with other agencies.

(20 U.S.C. 241c-1)

§ 302.53 Dissemination.

Each State agency and local educational agency shall have effective procedures for acquiring and disseminating to teachers, administrators, and parents significant information derived from special educational research, demonstration and similar projects, and for adopting, where appropriate, promising special educational practices developed through these projects for use in program planning and operation under this part.

(20 U.S.C. 241c-1)

§ 302.54 Construction and equipment.

(a) Construction undertaken and equipment purchased under this part are subject to the requirements of §§ 200.80 and 200.81 of this chapter.

(b) Each State agency and local educational agency shall insure that appropriately trained staff will be available to use and operate any equipment acquired with funds under this part.

(20 U.S.C. 241c-1)

§ 302.55 Participation of children who were not counted.

Children who may be counted under § 302.41 but who were not counted, may participate in projects on a space available basis if:

(a) All children who were counted are receiving benefits from funds made available under this part; and

(b) All children who were counted are receiving an appropriately designed education commensurate with their needs.

(20 U.S.C. 241c-1)

§ 302.56 Participation in programs under Part 201.

Nothing in this part precludes handicapped children from participating in projects funded under Part 201 of this chapter.

(20 U.S.C. 241c-1)

Subpart G—Allowable Costs

§ 302.60 General.

(a) [Reserved]

(b) *Expenditures.* (1) Each agency may use funds under this part for expenditures which are reasonably necessary for activities directly related to the conduct of programs and projects to meet the special education needs of handicapped children.

(2) Permissible expenditures may include planning, evaluating, and disseminating the results of those activities.

(20 U.S.C. 241c-1 and 241g(b))

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.61 Special education and related services.

(a) Each agency may use funds under this part for the costs of special education and related services for handicapped children.

(b) The State agency may provide agency-wide services (in addition to services located in particular schools) under this part, if it determines that the educational needs of handicapped children will be better served by that method of programming.

(20 U.S.C. 241c-1)

§ 302.62 Tuition and services.

(a) *Tuition.* An agency shall not use funds under this part for the payment of tuition or fees.

(b) *Services.* Parents of handicapped children served under this part shall not be charged for special education or related services provided for those children (including the cost of room and board and non-medical care which are provided in an institutional residential care facility in which the child is placed for educational purposes).

(20 U.S.C. 241c-1)

§ 302.63 Transportation costs.

Expenditures for transportation of handicapped children are allowable only under the following conditions:

(a) The State educational agency has determined that the transportation is essential to ensure the child's safety or to enable the child to benefit from the special education or the other related services being provided;

(b) The school in which the child is enrolled has made reasonable efforts to secure other means of or resources for transportation of the child;

(c) There is no State law requiring the provision of the service; and

(d) The transportation is not normally provided to other handicapped children by the agency in whose educational program the child is enrolled.

(20 U.S.C. 241c-1)

Subpart H—Requirements Under Part B of the Education of the Handicapped Act

§ 302.70 Part B regulations.

Regulations under Part B of the Education of the Handicapped Act are located in Part 300 of this chapter.

(20 U.S.C. 1417(b))

Comment. The Secretary advises each recipient to read the relevant regulatory provisions in Part 300, since those regulations provide additional specific rules for meeting the requirements in §§ 302.71 through 302.74.

§ 302.71 Supervision of programs for handicapped children.

Section 612(6) of the Education of the Handicapped Act requires that the State educational agency be responsible for ensuring that all educational programs for handicapped children within the State, including all programs administered by any other State or local agency, are under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency.

(20 U.S.C. 1412(6))

§ 302.72 Use of funds for handicapped children.

(a) Section 613(a)(2) of the Education of the Handicapped Act requires each State to insure that funds provided under this part to assist in the education of handicapped children are used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children.

(b) Paragraph (a) of this section does not limit the requirements of this part or of section 121 of the Act.

(20 U.S.C. 1413(a)(2))

§ 302.73 State educational agency standards.

Section 612(6) of the Education of the Handicapped Act requires that any activity to assist the education of handicapped children under this part meet the educational standards of the State educational agency.

(20 U.S.C. 1412(6))

§ 302.74 Withholding payments for noncompliance.

(a) Section 616(a)(2)(B) of the Education of the Handicapped Act provides that the Secretary may withhold payments available under this part for assisting the education of handicapped children:

(1) For failure to comply substantially with any provision of section 612 or 613 of the Education of the Handicapped Act; or

(2) In the administration of the annual program plan under Part B of the Education of the Handicapped Act for failure to comply with:

(i) Any provision of Part B of the Education of the Handicapped Act; or

(ii) Any requirements in the application of a local educational agency or intermediate educational unit approved by the State educational agency under that annual program plan.

(b) The Secretary must use the notice and hearing procedures in section 616 of the Education of the Handicapped Act before withholding payments under this section.

(20 U.S.C. 1416)

PART 305—REGIONAL RESOURCE CENTERS

Subpart A—General

Sec.

305.1 Scope.
305.2 Purpose.
305.3 Definition.
305.4 Eligible parties.
305.5 Regulations that apply to the Regional Resource Centers Program.

Subpart B—Services and Activities

305.10 Need and capability.
305.11 Services.
305.12 Location of centers.
305.13 Evaluation and dissemination.
305.14 Coordinating office for regional resource centers.
305.15 Parental participation.
305.16 Auxiliary activities.
305.17 Additional criteria.

AUTHORITY: Sec. 621, Pub. L. 91-230, 84 Stat. 181 (20 U.S.C. 1421), unless otherwise noted.

SOURCE: 40 FR 7413, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 305.1 Scope.

(a) This part applies to projects assisted under section 621 of the Act.

(20 U.S.C. 1421)

[40 FR 7413, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 305.2 Purpose.

Payment of Federal funds under this part may be made to assist eligible parties in the establishment and operation of regional centers which will develop and apply the best methods of appraising the special educational needs of handicapped children referred to them and will provide other services to assist in meeting such needs.

(20 U.S.C. 1421(a))

§ 305.3 Definition.

As used in this part: "Educational program" means a curriculum prescribed for a handicapped child, designed to meet the needs of that child as determined through testing and other methods of educational evaluation. The term includes:

(a) Long-range plans which generalize the sequence and content of educational experiences a child should have, over a period of years, through various schools, clinics, tutorial programs, and/or other kinds of broad units of teaching/learning situations;

(b) Short-range plans which generalize the sequence and content of educational experiences a child should have for the next few months, school year, or several years; and

(c) Plans for the immediate future which detail specific sets of teaching strategies, prescribed skill-building activities, or other specific curricular activities a child should have for the next few days, weeks, or month.

(20 U.S.C. 1421)

§ 305.4 Eligible parties.

Parties eligible to receive assistance under this part are (a) institutions of higher education, (b) State educational agencies, or (c) combinations of such agencies or institutions (which combinations may include one or more local educational agencies), within particular regions of the United States.

(20 U.S.C. 1421(a))

§ 305.5 Regulations that apply to the Regional Resource Centers Program.

(a) *Regulations.* The following regulations apply to the Regional Resource Centers Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 305.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Services and Activities

§ 305.10 Need and capability.

(a) In providing assistance under this part, the Secretary will take into consideration (1) the need for a regional center in the region to be served (including the number of handicapped children in the State or region to be served), and (2) the capability of the applicant to develop and apply, with the assistance of funds under this part, new methods, techniques, devices, or facilities relating to educational evaluation or education of handicapped children.

(b) Each regional center assisted under this part shall work with the State educational agencies in its region toward assuring effective educational evaluation and program placement for all handicapped children.

(20 U.S.C. 1421(b))

§ 305.11 Services.

Each regional center assisted under this part shall make available at least the following services:

(a) (1) Testing and educational evaluation to determine the special educational needs of handicapped children referred to such center.

(2) Preference will be given to (i) children for whom local or State services are not available, and (ii) children with the most complicated educational problems.

(3) Services under this paragraph shall include the development and appraisal of methods (which can be disseminated by way of demonstration or other appropriate means) for appraising those needs.

(4) The recipient shall provide for the dissemination, throughout the States, of information concerning the testing and evaluation capacity of the regional center.

(20 U.S.C. 1421(a)(1))

(b) Development of educational programs to meet those needs in cooperation with school officials and the parents of the concerned children. The regional center shall provide ongoing evaluation to identify the methods found most effective in meeting those needs.

(20 U.S.C. 1421(a)(2))

(c) Assistance to schools and other appropriate agencies, organizations, and institutions in providing the educational programs (developed under paragraph (b) of this section) through services such as (1) consultation (including, in appropriate cases, consultation with parents or teachers of handicapped children at the regional centers), (2) periodic reexamination and reevaluation of special education programs (including programs developed at the center under paragraph (b) of this section), and (3) regional workshops, (4) dissemination of printed or media packages on educational programming practices, (5) other technical services.

(20 U.S.C. 1421(a)(3))

(d) Following the educational progress of the handicapped children evaluated under paragraph (a) of this section, and modifying the programs developed under paragraph (b) of this section or assisted under paragraph (c) of this section as necessary to meet the special educational needs of those children.

(e) Technical assistance to States in the region served by the center in the development of their capacity to evaluate and meet the educational needs of handicapped children.

(20 U.S.C. 1421(a)(3))

(f) Demonstration of new techniques of testing and new procedures of instruction.

(20 U.S.C. 1421(b))

§ 305.12 Location of centers.

To the extent feasible, regional centers will be distributed equitably throughout the Nation, and may, for demonstration purposes, be located both in urban and in rural areas.

(20 U.S.C. 1421)

§ 305.13 Evaluation and dissemination.

(a) [Reserved]

(b) Each center shall disseminate or provide for the dissemination of information regarding its activities, including the evaluation carried out under paragraph (a) of this section. Additional dissemination activities may be carried out under Part 315 of this chapter.

(20 U.S.C. 1421, 1424)

[40 FR 7413, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 305.14 Coordinating office for regional resource centers.

(a) The Secretary will establish a Coordinating office for regional resource centers to serve the regional centers, and to set forth strategies which accommodate sharing of resources and nonredundant activities among regional centers in instances where single efforts are warranted.

(b) The coordinating office shall: (1) Conduct studies to identify needs for educational studies and for evaluation instruments or procedures, (2) announce these needs to organizations which have the potential for satisfying these needs, (3) recommend priorities to the Secretary in meeting these needs, (4) maintain state of the art information on identification diagnostic, appraisal, and prescriptive techniques for use by the regional centers and State and intrastate agencies, (5) conduct regional and national seminars on educational evaluation of handicapped children and educational program prescriptions for regional center staffs, State and local educational agencies, and teacher training institutions, and (6) develop and disseminate training and information packets which are designed to improve the quality of the educational evaluation of, and program prescription for, handicapped children.

(20 U.S.C. 1423, 1424)

§ 305.15 Parental participation.

If a local education agency applies for assistance under this part, the application shall contain the policies, procedures, and assurance required under § 300.4(c) of this chapter regarding parental involvement and dissemination of information.

(20 U.S.C. 1231d, 1421)

§ 305.16 Auxiliary activities.

(a) Applications for assistance under this part shall specifically state any activities which an applicant intends to undertake pursuant to section 624 of the Act.

(b) Research activities under section 624(a)(1) of the Act are subject to applicable requirements contained in §§ 324.7, 324.1(b), and 324.4 of this chapter, as well as applicable provisions contained in Part 300 of this chapter.

(20 U.S.C. 1421, 1424)

§ 305.17 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation Plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590, Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1421)

[46 FR 5377, Jan. 19, 1981]

PART 307—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

Subpart A—Purpose; Eligible Parties

Sec.
307.1 Scope.
307.2 Purpose.
307.3 Eligible parties.
307.4 Regulations that apply to the Centers and Services for Deaf-Blind Children Program.

Subpart B—Organization of Centers

307.10 Cooperative arrangements.
307.11 Regional center sponsoring agency.
307.12 Other center components.

Subpart C—Geographical Requirements

307.22 Need for center.
307.23 Regional plan.

Subpart D—Services and Activities

307.33 Services.
307.34 Additional activities.
307.35 Construction and equipment.
307.36 Children to be served.
307.37 Determination of deaf-blind children.
307.38 Location of services.
307.39 Transportation.
307.40 Parental participation.
307.41 Additional criteria.

AUTHORITY: Sec. 622, Pub. L. 91-230, 84 Stat. 182 (20 U.S.C. 1422), unless otherwise noted.

SOURCE: 40 FR 7414, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Purpose; Eligible Parties

§ 307.1 Scope.

(a) This part applies to programs and projects assisted under section 622 of the Act.

(20 U.S.C. 1422)

[40 FR 7414, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 307.2 Purpose.

Payment of Federal funds under this part may be made for the purpose of providing (by grants to or contracts with eligible parties), through a limited number of model centers for deaf-blind children (referred to in this part as "regional centers"), a program designed to develop and bring to bear upon such children, beginning as early as feasible in life, those specialized, intensive professional and allied services, methods, and aids, that are found to be most effective to enable such children to achieve their full potential (a) for communication with, and adjustment to, the world around them, (b) for useful and meaningful participation in society, and (c) for self-fulfillment.

(20 U.S.C. 1422(a))

§ 307.3 Eligible parties.

Parties eligible to receive assistance under this part are public or nonprofit private agencies, organizations, or institutions.

(20 U.S.C. 1422(b))

§ 307.4 Regulations that apply to the Centers and Services for Deaf-Blind Children Program.

(a) *Regulations.* The following regulations apply to the Centers and Services for Deaf-Blind Children Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 307.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Organization of Centers

§ 307.10 Cooperative arrangements.

(a) *General.* To receive assistance under this part, eligible parties shall enter into cooperative arrangements with other eligible parties (referred to in this part as "participating agencies"), which may include those in another State.

(20 U.S.C. 1422)

[40 FR 7414, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 307.11 Regional center sponsoring agency.

The sponsoring agency shall be responsible for stimulating development of and coordinating and monitoring the status of contracted services for deaf-blind children in the region to be served, including the provision of those activities and services for deaf-blind children specified under §§ 307.33 and 307.34.

(20 U.S.C. 1422)

§ 307.12 Other center components.

Each regional center shall have a regional coordinator, a regional committee, and adequate staffing to administer the grant or contract.

(a) *Regional coordinator.* The regional coordinator shall be responsible for (1) preparation of the grant or contract application of the regional center; (2) implementation of approved program goals and supervision of the carrying out of those responsibilities of the sponsoring agency specified in § 307.10; and (3) establishment of the regional committee pursuant to paragraph (b) of this section.

(b) *Regional committee.* (1) The regional committee shall include in its membership (but shall not be limited to): A representative from the sponsoring agency, at least one representative from each State in the region to be served (including the State official or officials, or their designees, who are responsible for special education), at least one parent of a deaf-blind child in the area to be served, and at least one representative from each of the allied disciplines of medicine, social service, and rehabilitation services (which may include a representative of the National Center for Deaf-Blind Youths and Adults).

(2) The regional committee shall actively assist in (i) the planning, development, and operation of the regional center, (ii) the dissemination of information regarding the regional center's programs, (iii) the assessment of regional needs regarding deaf-blind children and the establishment of priorities respecting those needs for the region, and (iv) the evaluation of the extent to which the objectives of the regional center meet established short and long range regional goals.

(c) *Staff.* The regional center staff shall (1) stimulate early identification and followup of all deaf-blind children in the region, (2) maintain adequately organized records on each such child, and (3) stimulate, support, and monitor services, research, training, and evaluation provided or carried out by the regional center.

(d) *Participating agencies.* Participating agencies may include eligible parties which are health, education, or social service agencies or institutions in the region to be served, and which are engaged in, or responsible for, direct delivery of services to deaf-blind children or their families, regardless of whether those agencies are assisted through contracts with the sponsoring agency or are assisted from other public or private sources.

(20 U.S.C. 1422)

Subpart C—Geographical Requirements

§ 307.22 Need for center.

In providing assistance under this part, the Secretary will take into consideration the need for a center for deaf-blind children in the light of the general availability and quality of existing services for such children in the region to be served.

(20 U.S.C. 1422(c))

§ 307.23 Regional plan.

Each application for assistance under this part shall include a comprehensive plan to meet the special needs of deaf-blind children in the region to be served. In the case of an application for a continuation award, the regional committee established under § 307.12(b) shall actively assist in the development of this regional plan.

(20 U.S.C. 1422)

Subpart D—Services and Activities

§ 307.33 Services.

Each regional center assisted under this part shall provide at least the following services:

(a) Comprehensive and continuing diagnostic and evaluative services for deaf-blind children. Such services shall include (1) examinations by the following qualified personnel: Audiologists, opthalmologists, pediatricians, and other special consultants as needed, such as child psychologists, optometrists, orthodontists, pediatric neurologists, cardiologists, otorhinolaryngologists, speech pathologists, and occupational and physical therapists and (2) continuing psychoeducational assessments of intellectual, social-adaptive, and communication abilities, and emotional adjustment.

(b) A program for the adjustment, orientation, and education of deaf-blind children which integrates all the professional and allied services necessary therefor. This program may include therapeutic and adapted recreational and/or physical education activities and services.

(c) Effective professional consultative and counseling services for parents, teachers, and others who play a direct role in the lives of deaf-blind children, to enable them to understand the special problems of those children and to assist in the process of adjustment, orientation, and education of those children.

(20 U.S.C. 1422(d)(1))

§ 307.34 Additional activities.

(a) In addition to the services specified in § 307.33 each regional center shall carry out the following activities under Part 315 of this chapter:

(1) Development or demonstration of new, or improvements in existing methods, approaches, or techniques, which would contribute to the adjustment and education of deaf-blind children;

(2) Training (either directly or otherwise) of professional and allied personnel engaged or preparing to engage in programs specifically designed for those children, including payment of stipends for trainees and allowances for travel and other expenses for them and their dependents; and

(3) Dissemination of materials and information about practices found effective in working with those children.

(b) [Reserved]

(c) (1) Each regional center may also conduct research under section 624(a)(1) of the Act and Part 315 of this chapter to identify and meet the full range of special needs of deaf-blind children.

(2) Applications for assistance under this part shall specifically state any activities which an applicant intends to undertake pursuant to section 624 of the Act.

(3) Research activities under section 624(a)(1) of the Act are subject to applicable requirements contained in §§ 324.1(b), 324.4, and 324.7 of this chapter, as well as applicable provisions contained in Part 315 of this chapter and sections 2.1-2.2 and 3.1-3.5 of the guidelines for Part E of the Act.

(20 U.S.C. 1422, 1424)

[40 FR 7414, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 307.35 Construction and equipment.

Establishment and operation of regional centers under this part may include the construction of necessary facilities, including the construction of necessary residential facilities, and may include the acquisition of necessary equipment.

(20 U.S.C. 1404, 1422(b))

§ 307.36 Children to be served.

The services to be provided under § 307.33 shall be available on a continuing basis to all deaf-blind children in the geographic area to be served by the regional center, including deaf-blind children (a) who are enrolled in schools operated by participating agencies, (b) who are attending other programs for handicapped children, and (c) who are not able to cope with a regular school program.

(20 U.S.C. 1422)

§ 307.37 Determination of deaf-blind children.

(a) As used in this part, the term "deaf-blind children" means children who have auditory and visual handicaps, the combination of which causes such severe communication and other developmental and educational problems that they cannot properly be accommodated in special education programs solely for the hearing handicapped child or for the visually handicapped child.

(b) Determination that a child is a deaf-blind child within the meaning of paragraph (a) of this section shall be made by the regional center on the basis of an extended period of evaluation, conducted in the center or elsewhere by a team of specialists (at least including specialists in the fields of hearing, vision, and education of the handicapped), who shall make appropriate recommendations to the center as to whether a child is a deaf-blind child within the criteria set forth in paragraph (a) of this section.

(20 U.S.C. 1422)

§ 307.38 Location of services.

(a) Services provided to deaf-blind children by a regional center may be provided to those children (and, where applicable, other persons) regardless of whether they reside in the regional center, and may be provided at some place other than the center.

(b) A regional center may use the facilities, services, and resources available in another regional center to provide needed services for its deaf-blind children and their families except where such use will interfere with the program of the other regional center.

(20 U.S.C. 1422(d)(2))

§ 307.39 Transportation.

The services referred to in § 307.33 may include the provision of transportation for deaf-blind children (including an attendant), and for parents.

(20 U.S.C. 1422(d)(2))

§ 307.40 Parental participation.

If a local educational agency applies for assistance under this part, the application shall contain the policies, procedures, and assurance required under § 300.4(c) of this chapter regarding parental involvement and dissemination of information.

(20 U.S.C. 1231d)

§ 307.41 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—Members of racial or ethnic minority groups.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference: 34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1422)

[46 FR 5377, Jan. 19, 1981]

PART 309—EARLY EDUCATION FOR HANDICAPPED CHILDREN

Subpart A—Early Education Projects

Sec.

309.1 Scope.
309.2 Eligible parties.
309.3 Purpose.
309.13 Distribution.
309.14 Initial year proposal.
309.15 Participating children.
309.16 Development, parental involvement, and dissemination of information.
309.17 Coordination.
309.19 Priorities.
309.29 Advisory council.
309.30 Tuition.
309.31 Federal financial participation.
309.32 Auxiliary activities.

Subpart B—Outreach Activities

309.40 Activities.
309.41 Application content.

Subpart C—Implementation of Statewide Early Education Plans

309.50 Eligible parties.
309.51 Purpose.
309.52 Other applicable regulations.
309.53 Applications.

Subpart D—Other Applicable Regulations

309.60 Regulations that apply to the Handicapped Children Early Education Program.
309.61 Selection criteria.

Authority: Sec. 623, Pub. L. 91-230, 84 Stat. 183 (20 U.S.C. 1423), unless otherwise noted.

Source: 40 FR 7416, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Early Education Projects

§ 309.1 Scope.

(a) Except as otherwise provided, this subpart applies to all programs assisted under section 623 of the Act. Assistance under this part will be limited to those programs which the Secretary determines show the greatest promise of providing a comprehensive and strengthened approach to the special problems of handicapped children.

(20 U.S.C. 1423)

[40 FR 7416, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.2 Eligible parties.

Parties eligible to receive assistance under this subpart are public agencies and private nonprofit organizations.

(20 U.S.C. 1423(a))

§ 309.3 Purpose.

Payment of Federal funds under this subpart may be made for the purpose of assisting eligible parties in developing and carrying out experimental preschool and early education programs for handicapped children which incorporate the basic principles of child growth and development, psychology of learning, special education, and other disciplines that may be associated with the handicapped.

(20 U.S.C. 1423)

§ 309.13 Distribution.

Programs under this subpart will be distributed to the greatest extent possible throughout the Nation, and will be carried out both in urban and in rural areas.

(20 U.S.C. 1423(a))

§ 309.14 Initial year proposal.

Eligible applicants shall submit, as a condition to receiving assistance under this subpart for the first year of such assistance for an activity, a proposal containing the following information:

(a) A description of the population to be served including its socioeconomic, social and ethnic makeup, and the handicapping conditions of the children to be served;

(b) The criteria which will be used to determine whether a child is handicapped for the purpose of participating in programs assisted under this subpart;

(c) The curriculum design;

(d) The provision for parent-family participation;

(e) A description of proposed replication activities;

(f) A description of supplementary services available;

(g) The provision for coordination with other agencies,

(h) A description of the applicant's plans for the establishment of the advisory council required under § 309.29;

(i) Plans for continuation of the program after the period of Federal funding ceases; and

(j) A description of the provision for assessment of the progress of the children to be served.

(20 U.S.C. 1423)

§ 309.15 Participating children.

(a) "Preschool and early education" refers to a period from birth to the time a child would normally complete the third grade. The term includes the prenatal period where there is evidence that a handicapped child will be born.

(b) A program may also serve a limited number of handicapped children, beyond the preschool and early education period if such children are functioning at a level below that which would normally be expected upon a child's completion of the third grade.

(c) A program may serve one or a variety of types of handicapped children. In the case of integrated programs (those combining handicapped and non-handicapped children) funds provided under this subpart may support only the costs for the handicapped children.

(20 U.S.C. 1423)

§ 309.16 Development, parental involvement, and dissemination of information.

Each program shall include services and activities designed to accomplish the following objectives:

(a) To facilitate the intellectual, emotional, physical, mental, social, and language development of handicapped children. These services and activities must be appropriate to the age level, levels of development, family situations, and handicapping conditions of the children included in the program. These services shall include comprehensive and continuing diagnosis and evaluation of each child's development.

(b) (1) To encourage the effective participation in the development and operation of the program of parents (and other family members) of the children to be served. This participation, in addition to that provided under § 309.29, shall include (i) opportunities to advise and assist in the planning, development, operation, and evaluation of the project; (ii) training for parents and other family members (where appropriate) as a component of the project; (iii) appropriate participation in the educational and therapeutic components of the program; and (iv) opportunities to advise and assist in the dissemination of information regarding the program.

(2) If a local educational agency applies for assistance under this subpart, the application shall contain the policies, procedures, and assurance required in § 300.4(c) of this chapter regarding parental involvement and dissemination of information.

(c) To acquaint the community to be served by the program with the problem and potentialities of handicapped children. In addition, dissemination of information regarding the program shall be extended to the general public, the education community, and other professional communities by appropriate means. A program shall be structured so that its components can be replicated or adapted for use elsewhere.

(20 U.S.C. 1231d, 1423(a))

§ 309.17 Coordination.

In addition, each program shall include provision for the development of relationships with State and local educational agencies, and appropriate public and private health agencies, in such manner as to accomplish the following objectives:

(a) Inform those agencies of the nature and purposes of the program;

(b) Provide opportunities for the staff of the program to coordinate their activities with those of the staffs of those agencies;

(c) Use available services in order to provide a comprehensive program for children served by the program and in order to avoid duplication of effort;

(d) Facilitate the spread of knowledge about the program;

(e) Develop mechanisms for future replication or adaptation of program components;

(f) Relate the program to State and local planning;

(g) Inform those agencies of the number and special needs of children of school age who will be leaving the program in order to facilitate continuity in the educational program of those children and facilitate the provision of comprehensive services for them as they enter the local school system; and

(h) Encourage continued active parental participation in the education progress of handicapped children.

(20 U.S.C. 1231d, 1423 (a) and (b))

[40 FR 7416, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.19 Priorities.

Priority for assistance under this subpart will be given to applications which propose projects designed to: (a) Provide or develop models which can successfully group handicapped children with nonhandicapped children on a full or part-time basis and which are aimed at permitting the entry of handicapped children into the regular school system, (b) serve to further the goal set forth in § 309.13, (c) serve children of special age level or functional level groups within the limits provided for in § 309.15, (d) offer significantly improved delivery of specialized services to handicapped children residing in rural areas, (e) serve handicapped children who are also economically disadvantaged, or (f) serve children with specific handicapping conditions.

(20 U.S.C. 1423)

§ 309.29 Advisory council.

(a) Each recipient shall establish an advisory council upon official notice from the Secretary that it has been awarded a grant or contract under this subpart.

(b) At least one-fourth of the membership of the advisory council shall consist of parents living in the geographic area to be served by activities carried out under this subpart by the recipient, and at least two of such parents shall be parents of children served by those activities.

(c) The recipient shall arrange for the advisory council to assist actively in (1) the planning, development, and operation of the program, (2) acquainting the community to be served with the program, (3) disseminating information regarding the program, and (4) evaluating the success of the program.

(d) Each recipient shall provide to each member of its advisory council: (1) A copy of the Act and this part; (2) a copy of the program proposal and all documents in the possession of the recipient relating to the award of assistance under this part for the program; and (3) such other documents and information relating to the program as are reasonably necessary to permit the advisory council to perform its functions under this section.

(20 U.S.C. 1231d, 1423)

§ 309.30 Tuition.

No recipient may collect fees or other charges from, or with respect to, any child participating in activities assisted under this part.

(20 U.S.C. 1423)

§ 309.31 Federal financial participation.

(a) Federal financial assistance under this subpart will not exceed 90 percent of the cost of developing, carrying out, and evaluating a program.

(20 U.S.C. 1404, 1423(c))

[40 FR 7416, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.32 Auxiliary activities.

(a) Applications for assistance under this subpart shall specifically state any activities which an applicant intends to undertake pursuant to section 624 of the Act.

(b) Research activities under section 624(a)(1) of the Act are subject to applicable requirements contained in §§ 324.1(b), 324.4, and 324.7 of this chapter, as well as applicable provisions contained in Part 315 of this chapter.

(20 U.S.C. 1423, 1424)

Subpart B—Outreach Activities

§ 309.40 Activities.

(a) Parties which have received assistance for early education projects under section 623 of the Act for three or more years may apply for assistance for activities under section 624 of the Act which will assist other agencies in meeting the early educational needs of handicapped children.

(20 U.S.C. 1423, 1424)

[40 FR 7416, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.41 Application content.

An application for assistance under this subpart shall include:

(a) An assurance that direct services provided to handicapped children during the prior years of the early education project under section 623 of the Act will be continued by the applicant and supported from funds other than funds under section 623;

(b) Written evidence obtained from the responsible officials of the applicant of the amount and sources of funding for such continued support (both cash and in-kind), the number of children and personnel involved, and the location for the delivery of such services;

(c) Evidence of the need and demand for the activity to be funded under this subpart;

(d) Evidence of experience in working with other agencies in activities related to early education for the handicapped; and

(e) A description and samples of any early educational materials to be involved in the project assisted under this subpart.

(20 U.S.C. 1423, 1424)

Subpart C—Implementation of Statewide Early Education Plans

AUTHORITY: Sec. 624, Education of the Handicapped (20 U.S.C. 1424).

SOURCE: 41 FR 33558, Aug. 10, 1976, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 309.50 Eligible parties.

Parties eligible to receive awards under this subpart are State Educational Agencies.

(20 U.S.C. 1424)

§ 309.51 Purpose.

Payment of Federal funds under this subpart may be made for the purpose of assisting eligible parties in the implementation of Statewide plans for preschool and early education for handicapped children, and the acceleration of special services to those children.

(20 U.S.C. 1424)

§ 309.52 Other applicable regulations.

(a) [Reserved]

(b) Subpart A (Early Education Projects) of this part shall not apply to funds provided under this subpart.

(20 U.S.C. 1424)

[41 FR 33558, Aug. 10, 1976, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.53 Applications.

An application under this subpart shall include: (a) A detailed Statewide plan for preschool and early education (as defined in § 309.15) for all handicapped children in that State, which includes:

(1) A description including the age level and handicapping conditions of those children;

(2) Strategies for the provision of special education and related services for all of those children;

(3) A description of procedures for grouping those children according to their individual needs of special problems, for the provision of special services under the Statewide plan;

(4) A discussion of the overall goals and objectives of the Statewide plan;

(5) A timetable for the implementation of those goals and objectives for preschool and early education; and

(6) Strategies for providing parental participation in activities to be carried out under the Statewide plan.

(b) A review of existing State rules, policies, procedures and goals for the preschool and early education of handicapped children;

(c) A discussion of the relationship of the Statewide plan to the State's annual program plan under Part B of the Act;

(d) Strategies for training professional and allied personnel engaged in or preparing to engage in preschool or early education programs for handicapped children;

(e) A description of research and information gathering activities which are necessary to provide a full range of comprehensive services to meet the special needs or problems of handicapped children and their families;

(f) Plans for the development and coordination of programs which will accelerate special services to handicapped children throughout the State;

(g) A discussion of the anticipated impact of the Statewide plan on the handicapped preschool and early education population; and

(h) A description (including background and time commitment) of the staff (which may include an early childhood specialist at least half-time) to carry out the Statewide plan and activities under that plan.

(20 U.S.C. 1231d, 1424)

Subpart D—Other Applicable Regulations

§ 309.60 Regulations that apply to the Handicapped Children Early Education Program.

(a) *Regulations.* The following additional regulations apply to the Handicapped Children Early Education Program under Subparts A, B, and C of this part:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 309.

(3) For the programs under Subparts B and C only, the regulations in 34 CFR Part 315.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 309.61 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under Subparts A, B, and C of this part. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information the quality of shows that the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Handicapped persons; and

(C) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1423)

[46 FR 5378, Jan. 19, 1981]

PART 315—AUXILIARY ACTIVITIES

Sec.

315.1 Scope.
315.1-1 Regulations that apply to the Auxiliary Activities Program.
315.2 Purpose.
315.3 Eligible parties.
315.4 Selection criteria.
315.5 [Reserved]
315.6 Research.
315.7 Training.
315.8 Dissemination.

AUTHORITY: Sec. 624, Pub. L. 91-230, 84 Stat. 183 (20 U.S.C. 1424), unless otherwise noted.

SOURCE: 40 FR 7419, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 315.1 Scope.

(a) This part applies to activities assisted under section 624 of the Act.

(20 U.S.C. 1424)

[40 FR 7419, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 315.1-1 Regulations that apply to the Auxiliary Activities Program.

(a) *Regulations.* The following regulations apply to the Auxiliary Activities Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 315.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1223-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 315.2 Purpose.

Payment of Federal funds under this part may be made for the purpose of assisting eligible parties in such activities as:

(a) Research to identify and meet the full range of special needs of handicapped children;

(b) Development or demonstration of new, or improvements in existing methods, approaches, or techniques, which would contribute to the adjustment and education of those children;

(c) Training (either directly or otherwise) of professional and allied personnel engaged or preparing to engage in programs specifically designed for those children, including payments of stipends for trainees and allowances for travel and other expenses for them and their dependents; and

(d) Dissemination of materials and information about practices found effective in working with these children.

(20 U.S.C. 1424)

§ 315.3 Eligible parties.

The Secretary may provide assistance under this part either (a) pursuant to a grant or contract under Parts 305, 307, or 309 of this chapter, or (b) by separate grant to or contract with a public or nonprofit private agency, organization, or institution which (with or without Federal assistance under Parts 305, 307, or 309 of this chapter) is operating a center or providing a service which meets one or more of the purposes of Part C of the Act.

(20 U.S.C. 1424)

§ 315.4 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The criteria are not weighted.

(a) *Enhance effectiveness.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to enhance the effectiveness of the center or program to which they will be related.

(b) *Complement basic functions.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to complement rather than displace the basic functions of the center or program to which they will be related.

(c) *Additional criteria*—(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1424)

[46 FR 5379, Jan. 19, 1981]

§ 315.5 [Reserved]

§ 315.6 Research.

(a) Research conducted under § 315.2(a) shall be subject to requirements contained in §§ 324.1(b), 324.4, and 324.7 of this chapter.

(b) Applications for assistance under this part shall specifically state any research activities which an applicant intends to undertake.

(20 U.S.C. 1424)

§ 315.7 Training.

(a) *Inservice training.* Inservice training activities assisted under this part may include staff meetings; seminars; workshops; national, regional, and State institutes; demonstrations; and related activities.

(b) *Participants.* Trainee-participants in such activities may include present and potential project personnel and other teachers, administrators, child care workers, parents, and teacher aides.

(c) *Stipends and allowances.* In connection with training assisted under this part, the Secretary may authorize the payment of stipends and allowances (including but not limited to allowances for dependents and institutional fees) in such amounts as he determines to be appropriate for a particular training activity.

(20 U.S.C. 1424)

§ 315.8 **Dissemination.**

Activities assisted under § 315.2(d) may include dissemination (by demonstrations or otherwise) of materials and information for the benefit of educational institutions and the general public as well as for the benefit of members of professions engaged in the field of the education of the handicapped.

(20 U.S.C. 1424)

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

Subpart A—Purpose; Definitions

Sec.
318.1 Scope.
318.2 Purpose.
318.3 Grants to institutions of higher education and others.
318.4 Grants to State educational agencies.
318.5 Special project grants.
318.6 Definitions.
318.6-1 Regulations that apply to the Training Personnel for the Education of the Handicapped Program.

Subpart B—Applications for Grants

318.7 Departmental applications.
318.9 State personnel needs.
318.10 Areas of preparation.
318.11 Period of study.
318.20 Selection criteria.
318.21 Priorities; program areas.
318.22 Priorities; funding.

Subpart C—Financial Assistance for Students

Sec.
318.40 Student financial assistance.
318.41 Student qualifications.
318.42 Amount of assistance.
318.43 Stipends for baccalaureate students.
318.44 Dependency allowances for baccalaureate students.
318.45 Stipends for pre-doctoral students.
318.46 Related work experience for pre-doctoral students.
318.47 Stipends for post-doctoral students.
318.48 Dependency allowances for pre-doctoral and post-doctoral students.
318.49 Supplementation of stipends for pre-doctoral and post-doctoral students.
318.50 Financial assistance for short-term students.
318.51 Veterans readjustment assistance.
318.52 One allowance per dependent.
318.60 Payments to students.
318.61 Withdrawal of students.

Subpart D—Requirements for Student Eligibility

318.70 Citizenship of student.

AUTHORITY: Secs. 631, 632, 634, Pub. L. 91-230, 84 Stat. 184 (20 U.S.C. 1431, 1432, 1434), unless otherwise noted.

SOURCE: 40 FR 7419, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Purpose; Definitions

§ 318.1 **Scope.**

(a) This part applies to programs and projects assisted under sections 631, 632, and 634 of the Act.

(20 U.S.C. 1431, 1432, 1434)

[40 FR 7419, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 318.2 **Purpose.**

The general purpose of assistance under this part is to increase the quantity and quality of teaching personnel and other special personnel for the education of handicapped children by providing funds to eligible institutions and agencies which have, or will develop, programs for the preparation of such personnel.

(20 U.S.C. 1431, 1432, 1434)

§ 318.3 Grants to institutions of higher education and others.

Grants may be made to institutions of higher education and to other appropriate nonprofit institutions or agencies for the purposes set forth in section 631 of the Act, and to institutions of higher education for the purposes set forth in section 634 of the Act.

(20 U.S.C. 1431, 1434)

§ 318.4 Grants to State educational agencies.

Grants may be made to State educational agencies for the purposes set forth in section 632 of the Act. Such grants may include programs for preparation of physical educators and/or recreation personnel if such educators and personnel are certified (or certifiable) under applicable State law.

(20 U.S.C. 1432)

§ 318.5 Special project grants.

(a) Special project grants may be awarded for the purpose of designing programs that, upon implementation and evaluation, may be more effective and efficient in fulfilling the purposes of sections 631, 632, or 634 of the Act than current operational programs.

(b) If the purpose of a special project grant under paragraph (a) of this section has been accomplished, the institution or agency shall incorporate the personnel preparation program design within its program assistance grant (if any) by addition of the design, or by deletion of an existing design which the special project grant was formulated to replace.

(c) Special project grants may also be awarded for the purpose of conducting projects to identify major problems releveant to the preparation of personnel for the education of handicapped children, and to develop procedures for the solution of such problems.

(d) Special project grants may be used—

(1) [Reserved]

(2) For the award of financial assistance to students who participate in the program pursuant to Subpart C of this part.

(20 U.S.C. 1431, 1432, 1434)

[40 FR 7419, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 318.6 Definitions.

As used in this part:

"Dependent" means any of the following individuals over half of whose support, for the calendar year in which the school year begins, was received from a student:

(a) A spouse;

(b) A son or daughter of the student, or a descendent of either;

(c) A stepson or stepdaughter of the student;

(d) A brother, sister, stepbrother, or stepsister of the student;

(e) A father or mother of the student, or an ancestor of either;

(f) A stepfather or stepmother of the student;

(g) A son or daughter of a brother or sister of the student;

(h) A brother or sister of the father or mother of the student;

(i) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, of the student;

(j) An individual (other than the student's spouse) who, during the student's entire calendar year, lives in the student's home and is a member of the student's household (but not if the relationship between the individual and the student is in violation of local law); or

(k) An individual who—

(1) Is a descendent of a brother or sister of the father or mother of the student;

(2) For the school year of the student receives institutional care required by reason of a physical or mental disability; and

(3) Before receiving such institutional care, was a member of the same household as the student.

A legally adopted child or a child placed in the student's home for adoption by an authorized agency is considered to be a child by blood. A citizen of a foreign country may not be claimed as a dependent, unless he is a resident of the United States, Canada, or Mexico, or Panama, or the Canal Zone, at some time during the calendar year in which the school year of the student begins, or is a resident of the Philippines born to, or adopted by, a student while he was a member of the Armed Forces, before January 1, 1956, or is an alien child legally adopted by and living with a student as a member of his household for the entire calendar year.

"Post-doctoral student" means a student who receives training beyond the attainment of a doctoral degree.

"Pre-doctoral student" means a student who receives training beyond the baccalaureate level, but does not include a post-doctoral student. The term includes a student who is a master's or doctoral degree candidate.

(20 U.S.C. 1431, 1432, 1434)

§ 318.6-1 Regulations that apply to the Training Personnel for the Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Training Personnel for the Education of the Handicapped Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 318.

(b) *How to use regulations: how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Applications for Grants

§ 318.7 Departmental applications.

Each application by an institution of higher education made on behalf of one of its departments (such as special education, speech and hearing, or physical education and recreation), shall include all programs within that department for which assistance is requested.

(20 U.S.C. 1431, 1434)

§ 318.9 State personnel needs.

Each application shall include (a) a statement by the State educational agency of personnel needs for education of the handicapped and a statement by the applicant of how the proposed program relates to those stated needs, and (b) a description of the ways in which the recipient's program goals and objectives relate to the purposes of Part D of the Act.

(20 U.S.C. 1431, 1432, 1434)

§ 318.10 Areas of preparation.

In addition to the areas of preparation related to the various categories specified in § 300.2 of this chapter (definition of "Handicapped children"), applications may include such areas as the following: combined areas (multi-handicapped), special education administration, physical education and/or recreation for the handicapped, and vocational education for the handicapped.

(20 U.S.C. 1431, 1432, 1434)

§ 318.11 Period of study.

The period of study shall be defined by the institution or agency providing instruction. The "period of study" is the time required to accomplish the program activities as specified by the institution or agency. The period of study may be the full academic year, a summer session, or an intensive study period such as an institute, a conference, a presession, a postsession or an intersession, or any combination of such periods.

(20 U.S.C. 1431, 1432, 1434)

§ 318.20 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent to which the applicant specifically provides evidence that program graduates are meeting the educational needs of handicapped children at the local, State, or national level.

(g) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children.

(h) The extent to which—

(1) Present and former students;

(2) Employing agencies (school districts, State agencies, etc.); and

(3) Individuals (parents, practicing teachers, etc.), are involved in program planning, implementation, and evaluation.

(i) The extent to which the evaluation design and procedures—

(1) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(2) Provide for the collection of quantifiable program performance information including—

(i) The numbers of personnel prepared and placed in positions relevant to the education of handicapped children;

(ii) The type and location of positions accepted by program graduates;

(iii) The number of handicapped children served by program graduates;

(iv) The length of time that program graduates serve handicapped children;

(v) Employers evaluation of program graduates' proficiency; and

(vi) The effectiveness of program graduates in facilitating the educational progress of handicapped children.

(j) The extent to which the application describes procedures for assessing the impact, and in case of an application for continuation support, provides evidence of impact of the program upon other related programs within the institution, community programs for the education of handicapped children, and improvement of services for handicapped children at the local, State, and/or national level.

(k) The extent to which the application describes and specifies the various roles or positions for which students are prepared, the tasks associated with these roles, and the competencies that must be acquired to complete each task successfully.

(l) The extent to which the application includes a delineation of competencies that each program graduate will acquire and will subsequently exhibit and how the competencies will be evaluated.

(m) The extent to which substantive content and organization of the program—

(1) Are appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(2) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of qualified educators of handicapped children.

(n) The extent to which appropraite practicum facilities are—

(1) Utilized for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination, and length; and

(2) Accessible to the applicant and students.

(o) The amount of fiscal and other effort the applicant will contribute to the program, and a delineation of the procedures that will be implemented for the increase of this effort over a specified time period in relationship to the amout of Federal funds awarded for support of the program.

(20 U.S.C. 1432, 1434)

[46 FR 5379, Jan. 19, 1981]

§ 318.21 Priorities; program areas.

The Secretary awards funds under this part only for programs in one or more of the following program areas:

(a) *Early childhood education.* Preparation of educational personnel to serve handicapped children ages 0–6;

(b) *Severely handicapped.* Preparation of personnel to serve the severely and multi-handicapped; preparation of personnel to serve handicapped children where large needs still exist, e.g., seriously emotionally disturbed and autistic; programs which prepare personnel for regional and national needs, e.g., low incidence areas such as the visually handicapped and deaf.

(c) *Paraprofessional.* Preparation of personnel (for example, at community and junior colleges) to assist a professional in the education of handicapped children;

(d) *Physical education.* Preparation of personnel to provide physical education for handicapped children;

(e) *Recreation.* Preparation of personnel to provide therapeutic recreation services for handicapped children;

(f) *Interdisciplinary.* Preparation of personnel to work with handicapped children on an interdisciplinary basis;

(g) *General special education.* Preparation of personnel who will provide education services to handicapped children;

(h) *Vocational and career education.* Preparation of personnel to provide career or vocational education for the handicapped;

(i) *Regular education.* Pre-service and in-service programs which prepare regular education personnel, physical education personnel, or recreation specialists, to provide services to handicapped children. These programs may include supportive services from special education personnel who work with handicapped children;

(j) *Developmental assistance.* Programs which provide postdoctoral training in the education of the handicapped;

(k) *Model implementation (special projects).* Programs which develop new models of instruction or prepare personnel for an innovative role in the education of handicapped children; and

(l) *Volunteers.* Preparation of volunteers, including parents, to assist in the provision of education to handicapped children.

(20 U.S.C. 1431, 1432, 1434)

Comment. Rather than being a discrete priority, functional communication may be addressed under each or any combination of the twelve priorities through the training of speech pathology personnel.

[42 FR 20300, Apr. 19, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 318.22 Priorities; funding.

(a) The priorities in § 318.21 are not in order of importance and are not assigned relative weight in funding decisions.

(20 U.S.C. 1431, 1432, 1434)

[42 FR 20300, Apr. 19, 1977, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart C—Financial Assistance for Students

§ 318.40 Student financial assistance.

All or a portion of the funds awarded under this part may be used by the institution or agency to provide direct financial assistance to students.

(20 U.S.C. 1431, 1432, 1434)

§ 318.41 Student qualifications.

Direct financial assistance may be provided to students only if:

(a) The student is qualified for admission to the program at the baccalaureate, pre-doctoral, or post-doctoral level of academic study;

(b) The student maintains continuous and acceptable progress in a course of study on a part-time or full-time basis; and

(c) The student is able to demonstrate a need for financial assistance.

(20 U.S.C. 1431, 1432, 1434)

§ 318.42 Amount of assistance.

Subject to the limitations contained in this part, grantees will disburse financial assistance to students in amounts commensurate and consistent with established institution or agency policy for various levels of academic study, and policy relevant to providing financial assistance to part-time and full-time students.

(20 U.S.C. 1431, 1432, 1434)

§ 318.43 Stipends for baccalaureate students.

Students enrolled for a full-time academic year at the baccalaureate level may receive a yearly stipend not exceeding $800.

(20 U.S.C. 1431, 1432, 1434)

§ 318.44 Dependency allowances for baccalaureate students.

Students at the baccalaureate level are not eligible for dependency allowances.

(20 U.S.C. 1431, 1432, 1434)

§ 318.45 Stipends for pre-doctoral students.

Except as provided in § 318.46, students enrolled for a full-time academic year at the pre-doctoral level may receive stipends not exceeding:

(a) $2400 in the first pre-doctoral year,

(b) $2600 in each of the years between the first and terminal year, and

(c) $2800 in the terminal year.

(20 U.S.C. 1431, 1432, 1434)

§ 318.46 Related work experience for pre-doctoral students.

(a) Students enrolled for a full-time academic year at the pre-doctoral level who have had professional work experience related to the education of handicapped children may receive annual stipends not exceeding the following amounts:

(1) Less than 12 months of experience—$3,000;

(2) 12-23 months of experience—$3,300;

(3) 24-35 months of experience—$3,600;

(4) 36-47 months of experience—$3,900; or

(5) 48 months or more of experience—$4,200.

(b) Each single full-time academic year of pre-doctoral experience in the field of education of handicapped children shall equal 12 months of related professional work experience for the purposes of paragraph (a) of this section.

(c) If the student has been awarded a Master's degree in a field relevant to the education of handicapped children, an additional amount, not exceeding $500, may be added to the stipend provided under paragraph (a) of this section.

(d) No stipend at the pre-doctoral level shall exceed $4,700.

(20 U.S.C. 1431, 1432, 1434)

§ 318.47 Stipends for post-doctoral students.

(a) Students enrolled for a full-time academic year at the post-doctoral level may receive stipends not exceeding (1) $6,000 if the student does not have relevant full-time academic year experience at the post-doctoral level; (2) $6,500 if the student has one full-time academic year of relevant experience at the post-doctoral level; and (3) $7,000 if the student has two or more full-time academic years of relevant experience at the post-doctoral level.

(b) Each 12 months of professional work experience related to the field of the education of the handicapped shall equal one full-time academic year of relevant experience at the post-doctoral level for the purpose of paragraph (a) of this section.

(20 U.S.C. 1431, 1432, 1434)

§ 318.48 Dependency allowances for pre-doctoral and post-doctoral students.

(a) Students enrolled for a full-time academic year at the pre-doctoral and post-doctoral levels may receive allowances not exceeding $600 for each dependent.

(20 U.S.C. 1431, 1432, 1434)

§ 318.49 Supplementation of stipends for pre-doctoral and post-doctoral students.

Grantees may use Federal funds under Part D of the Act to supplement stipends for pre-doctoral and post-doctoral students to accommodate regional cost of living variations and cases of special needs, providing that such supplements do not exceed $1,000 per student per academic year.

(20 U.S.C. 1431, 1432, 1434)

§ 318.50 Financial assistance for short-term students.

(a) Students enrolled for a period of study less than a full-time academic year but of at least two days length, may receive a stipend of up to $15 per day but not exceeding $75 per week. These students are not eligible for dependency allowances.

(b) Students who are receiving assistance under §§ 318.43, 318.45, 318.46, 318.47, or 318.48 at the time of their short-term study are not eligible for financial assistance under this section.

(20 U.S.C. 1431, 1432, 1434)

§ 318.51 Veterans readjustment assistance.

A dependency allowance may not be claimed for an individual who is concurrently receiving assistance under Pub. L. 82-550, as amended (Veterans Readjustment Assistance Act of 1952).

(20 U.S.C. 1431, 1432, 1434)

§ 318.52 One allowance per dependent.

No individual may be claimed for a dependency allowance by more than one student.

(20 U.S.C. 1431, 1432, 1434)

§ 318.60 Payments to students.

(a) Grantees shall insure that appropriate payments are made to students receiving assistance under this part.

(b) Students enrolled in a full-time academic year program shall receive regular and frequent payments of any assistance provided.

(c) Except as provided in § 318.61, the full amount of each stipend and dependency allowance awarded must be paid.

(20 U.S.C. 1431, 1432, 1434)

§ 318.61 Withdrawal of students.

Financial adjustments must be made when a student withdraws or is dismissed before the end of the full term of the program. For graduate and undergraduate academic year and short term programs, the remaining funds may be given as a partial award to another student who is currently enrolled at the institution. In such cases, the grantee shall notify the Secretary that such an adjustment has been made. Remaining funds will be considered an overpayment, unless used as a partial award or in other ways consistent with the applicable regulations contained in this part.

(20 U.S.C. 1431, 1432, 1434)

Subpart D—Requirements for Student Eligibility

§ 318.70 Citizenship of student.

A student must be a citizen or a national of the United States, or be in the United States for other than a temporary purpose and intend to become a permanent resident.

(20 U.S.C. 1431, 1432, 1434)

PART 320—RECRUITMENT OF PERSONNEL AND DISSEMINATION OF INFORMATION

Sec.

320.1 Scope.
320.2 Purpose.
320.3 Eligible parties.
320.4 Distribution of projects.
320.5 Regulations that apply to the Recruitment of Personnel and Dissemination of information Program.

AUTHORITY: Sec. 633, Pub. L. 91-230, 84 Stat. 184 (20 U.S.C. 1433), unless otherwise noted.

SOURCE: 40 FR 7422, Feb. 20, 1975, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 320.1 Scope.

(a) This part applies to projects assisted under section 633 of the Act.

(20 U.S.C. 1433)

[40 FR 7422, Feb. 20, 1975, as amended at 45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 320.2 Purpose.

Payment of Federal funds under this part may be made for the purpose of assisting eligible parties in carrying out projects for:

(a) Encouraging students and professional personnel to work in various fields of education of handicapped children and youth through, among other ways, developing and distributing imaginative or innovative materials to assist in recruiting personnel for such careers, or publicizing existing forms of financial aid which might enable students to pursue such careers;

(b) Disseminating information about programs, services, and resources for the education of handicapped children;

(c) Using parent, volunteer, media and other organizations to provide information concerning handicapped children to the general public; and

(d) Providing referral services (including referral to educational, diagnostic, and clinical facilities and services) to parents, teachers, and other persons especially interested in the handicapped.

(20 U.S.C. 1433)

§ 320.3 Eligible parties.

Parties eligible to receive assistance through grants or contracts under this part are public or private agencies, organizations, or institutions, except that grants only will be made to public or private non-profit agencies, organizations, and institutions.

(20 U.S.C. 1433)

§ 320.4 Distribution of projects.

Projects will be distributed to the greatest extent possible throughout the Nation and will be carried out both in urban and rural areas.

(20 U.S.C. 1433)

§ 320.5 Regulations that apply to the Recruitment of Personnel and Dissemination of information Program.

(a) *Regulations.* The following regulations apply to the Recruitment of Personnel and Dissemination of Information Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 320.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22532, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PART 322—TRAINING PROGRAM FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

Subpart A—General

Sec.
322.1 Purpose of the program.
322.2 Eligible applicants.
322.3 Regulations that apply to this program.
322.4 Definitions that apply to this part.

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

322.10 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

322.20 Distribution of grants.
Sec.
322.21 Criteria for determination of need for teachers and other specialists.

Subpart E—What Conditions Must Be Met by a Grantee and by a Student Who Receives a Fellowship?

322.30 Criteria to assure appropriate training.
322.31 Two-year teaching requirement.
322.32 Restrictions on employment.

AUTHORITY: Title V-C of the Higher Education Act of 1965, as amended, (20 U.S.C. 1119b-1119b-5), unless otherwise noted.

SOURCE: 46 FR 4915, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 322.1 Purpose of the program.

(a) This program is intended to increase the numbers of persons qualified to teach handicapped children in areas that have a shortage of those persons.

(b) The program provides grants to States to fund fellowships at institutions of higher education.

(20 U.S.C. 1119b)

§ 322.2 Eligible applicants.

State educational agencies are eligible to apply for grants under this part.

(20 U.S.C. 1119b)

§ 322.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 (State-administered programs) and 77 (Definitions).

(b) The regulations in this Part 322.

(20 U.S.C. 3474)

§ 322.4 Definitions that apply to this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Grant
Local educational agency
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to the regulations in this part:

"Act" means Title V-C of the Higher Education Act of 1965, as amended.

"Special education" has the same meaning as defined in section 602(16) of the Education of the Handicapped Act, as amended. (See 34 CFR 300.14—formerly 45 CFR 121a.14—Definition of "special education".)

(20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 322.10 Application requirements.

To receive a grant, a State educational agency shall submit an application that meets the requirements of EDGAR Part 76, Subpart C, and Section 542 of the Act.

(20 U.S.C. 1119b-1)

Subpart D—How Does the Secretary Make a Grant?

§ 322.20 Distribution of grants.

(a) The Secretary makes a grant to each State that—(1) Has a shortage of teachers or other specialists in special education; and

(2) Meets the requirements under the Act and the regulations in this part.

(b) The Secretary determines the amount of each State's grant by dividing the number of teachers and other specialists needed in that State by the total number needed by all States, and multiplying that percentage by the amount of funds available for grants under this program.

(20 U.S.C. 1119b(c))

§ 322.21 Criteria for determination of need for teachers and other specialists.

(a) The Secretary determines a State's need for teachers and other specialists based on information provided by the State.

(b) A State may provide this information—

(1) In its application; or

(2) By reference to the information relating to personnel development in its State plan under Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1119b(b)(c))

CROSS REFERENCE: 34 CFR Part 300 (Formerly 45 CFR Part 121a)—Assistance to States for Education of Handicapped Children.

Subpart E—What Conditions Must Be Met by a Grantee or by a Student Who Receives a Fellowship?

§ 322.30 Criteria to assure appropriate training.

(a) A State may not award a fellowship unless the State determines that—

(1) The student receiving the fellowship will attend an institution of higher education that offers a program in special education that meets applicable State standards; and

(2) The specialized training that the student receives will be in the subject areas in which there is the greatest need in the State for teachers of special education.

(b) A student receiving a fellowship under this part shall—

(1) Devote at least one-half of a full-time academic workload to study in the area of special education for which the fellowship is awarded; and

(2) Maintain satisfactory progress, as determined by the institution of higher education that the student attends.

(20 U.S.C. 1119b(b) (2) and (3); 1119b-3(a))

§ 322.31 Two-year teaching requirement.

(a) (1) Within the five-year period after a student completes the training for which a fellowship was awarded under this part, the student must teach for a period of not less than two years in—

(i) An elementary or secondary school of a local educational agency of the State that awarded the fellowship;

(ii) A public elementary or secondary school of that State; or

(iii) A public educational program, approved by the local educational agency or the State, which has (or has provided assurances that it will have) a special education program.

(2) The student must obtain State educational agency approval of the school or program in which the student intends to teach. The school or program must be located in an area with a shortage of teachers or other specialists in special education, as measured by—

(i) Lack of special education services for handicapped children in the area;

(ii) Lack of other specialized services for handicapped children in the area; or

(iii) High ratio of students to teachers in the special education programs in the area.

(b) (1) If the student does not meet the conditions of paragraph (a), the State shall require the student to repay the stipend provided to the student and the allowances paid to the institution of higher education.

(2) If the State educational agency determines that the student did not meet the requirements of paragraph (a) for reasons beyond the student's control, the State educational agency shall reduce or eliminate the amount of the student's repayment. The amount of any reduction is at the discretion of the State educational agency.

(20 U.S.C. 1119b-1(b))

§ 322.32 Restrictions on employment.

(a) A student may not engage in gainful employment unless the employment is in a federally-assisted program providing services to handicapped children.

(b) (1) If the student engages in any other gainful employment, the State educational agency shall reduce the student's stipend.

(2) The State educational agency may set the amount of reduction of a stipend as appropriate under the particular circumstances.

(20 U.S.C. 1119b-3(a))

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED

Sec.

324.1 Scope.
324.1-1 Regulations that apply to the Research in Education of the Handicapped Program.
324.2 Purpose.
324.3 Eligible parties.
324.4 Research and model projects.
324.5 [Reserved]
324.6 Limitations on costs.
324.7 Selection criteria for research programs.
324.8 Selection criteria for model programs.
324.9 Priorities for research and model programs.
324.10 How the Secretary selects and announces a priority.
324.11 How the Secretary uses a priority.
324.12 Separate competition for all authorized Research and Model Programs Activities.

APPENDIX

AUTHORITY: Sec. 641-644, Education of the Handicapped Act, as amended, 84 Stat. 185 (20 U.S.C. 1441-1444), unless otherwise noted.

SOURCE: 43 FR 36634, Aug. 18, 1978, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 31997, 31998, June 19, 1981, §§ 324.3, 324.4, 324.9, and 324.10 were revised, § 324.5 was removed, and §§ 324.11 and 324.12 were added, effective Aug. 3, 1981.

For the regulations remaining in effect until August 3, 1981, consult Title 45 Part 121h of the Code of Federal Regulations revised as of October 1, 1980.

§ 324.1 Scope.

(a) This part applies to programs and projects assisted under Part E of the Act. Sections 324.6 and 324.7 and paragraph (b) of this section apply to research programs and projects assisted under sections 624(a)(1), 651(a)(2)(A), and 652 of the Act.

(20 U.S.C. 1401, 1424, 1441, 1442, 1451, 1452)

[43 FR 36634, Aug. 18, 1978, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 324.1-1 Regulations that apply to the Research in Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Research in Education of the Handicapped Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 324.

(3) The definitions in 34 CFR Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 324.2 Purpose.

The Secretary makes awards to eligible parties for research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of handicapped children. This may include model programs designed to meet the special educational needs of those children. It may also include research and related purposes, and research, surveys, or demonstrations, relating to physical education and recreation for handicapped children.

(20 U.S.C. 1441, 1442)

§ 324.3 Eligible parties.

The Secretary may make grants to or contracts with States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations. In addition the Secretary may award contracts to profitmaking organizations.

(20 U.S.C. 1441-1442)

[46 FR 31997, June 18, 1981]

§ 324.4 Research and model projects.

(a) Research projects supported under this part are designed to generate knowledge about the education of handicapped children and to translate such knowledge into practical techniques and materials.

(b) Model projects supported under this part develop and implement innovative educational programs that serve handicapped children either directly or indirectly. These projects are designed to—

(1) Improve significantly an aspect of the education of the handicapped population;

(2) Continue beyond the award period; and

(3) Provide for the dissemination and replication of a successful program.

(20 U.S.C. 1441-1442)

[46 FR 31997, June 18, 1981]

§ 324.5 [Reserved]

§ 324.6 Limitations on costs.

(a) Each recipient of a grant under this part must provide a share of the entire cost of the program or project. However, the amount of contribution by the recipient to the cost of the program or project does not affect the disposition of the application by the Secretary.

(b) In the case of model programs which include both handicapped and nonhandicapped children Federal funds may be used only for those costs related to serving the handicapped children.

(c) Federal funds provided for a model program may not be used to support an entire program which has operated in the past with funds from other sources. However, Federal funds may be used to add major components to a currently operating project which has only been able to conduct pilot activities.

(Pub. L. 92-48, Title III, Sec. 306, 85 Stat. 106, FMC73-3 (20 U.S.C. 1441, 1442))

§ 324.7 Selection criteria for research projects.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The potential importance of the project to the education of the handicapped. (15 points)

(g) The probable impact of proposed research and development products and the extent to which products can be expected to have a direct influence on the handicaped or personnel responsible for the education of the handicapped. (15 points)

(h) Technical soundness of the research and development plan and adequacy of specification of procedures. (30 points)

(20 U.S.C. 1441, 1442)

[46 FR 5380, Jan. 19, 1981]

§ 324.8 Selection criteria for model programs.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The importance and relevance of the program to the education of handicapped children. (10 points)

(g) The probable impact of proposed end products. (10 points)

(h) The extent to which the program is eligible for consideration as a "model." (See § 324.4.) (15 points)

(i) Technical soundness of the proposal as judged by plans for assessment of a child's progress and appropriateness of program approach. (13 points)

(j) The extent to which the program plans for the development and implementation of individualized education programs. (See 34 CFR 300.340.) (5 points)

(k) The extent of coordination with other appropriate agencies. (5 points)

(20 U.S.C. 1441, 1442)

[46 FR 5381, Jan. 19, 1981]

§ 324.9 Priorities for research and model programs.

The Secretary may select annually one or more priorities from the following:

(a) *Research Integration Projects.* This priority supports projects that examine the state of the art in areas related to education of the handicapped and that analyze and interpret future research needs in those areas.

(b) *Technology Projects.* This priority supports projects on the use of technological devices and systems in schools and by handicapped students.

(c) *Assessment Projects.* This priority supports projects on assessment instruments and systems related to education of the handicapped.

(d) *Youth Employment Projects.* This priority supports projects on the role of the school in increasing the employability of handicapped individuals, and on any option open to the handicapped providing for the transition from school to work.

(e) *Special Population/Handicapped Projects.* This priority supports projects dealing with the unique educational problems resulting from a combination of membership in a particular special population and handicapping condition(s).

(f) *Non-vocal Communication Projects.* This priority supports projects related to non-vocal, severely handicapped individuals.

(g) *School Based Research Projects.* This priority supports research based upon data available from school records focusing on issues related to the education of handicapped children.

(h) *Student Initiated Research Projects.* This priority provides support to post-secondary students to initiate and direct a broad range of research and research-related projects focusing on the education of handicapped children. The Secretary limits eligible applicants to post-secondary students to assist in the implementation of Statewide personnel development.

(i) *Related Services Projects.* This priority supports projects focusing on the provision of related services for handicapped children as defined by the Education of the Handicapped Act, and other facilitative services or activities which complement the implementation of that Act.

(j) *Secondary Age Level Projects.* This priority supports projects related to educational services to handicapped children who are of post-elementary age or grade level.

(k) *Specific Handicapping Conditions Projects.* Priority consideration may be given to projects relating to any specific handicapping condition, including appropriate subpopulations.

(l) *Post-Secondary Projects.* This priority supports projects related to post-secondary and continuing education for the handicapped.

(m) *Special Settings Projects.* This priority supports projects relating to special education problems which are unique to a particular setting.

(n) *Parent Projects.* This priority supports projects relating to the role of parents and the family in the education of the handicapped.

(20 U.S.C. 1441-1442)

[46 FR 31997, June 18, 1981]

§ 324.10 How the Secretary selects and announces a priority.

(a) The Secretary selects a priority based upon current needs in the education of handicapped children.

(b) The Secretary announces the priority areas selected from § 324.9 for each fiscal year in the Application Notice for that year.

(20 U.S.C. 1441-1442)

[46 FR 31998, June 18, 1981]

§ 324.11 How the Secretary uses a priority.

(a) The Secretary establishes a separate competition for each selected priority area. An application which does not address a priority area will not be considered in the competition for that area.

(b) If an application addresses both a priority area and a non-priority area, the Secretary may consider that part which addresses the priority area separately from that which does not.

(20 U.S.C. 1441-1442)

[46 FR 31998, June 18, 1981]

§ 324.12 Separate competition for all authorized Research and Model Programs Activities.

In addition to the use of any priority area selected under § 324.9, the Secretary establishes separate competitions, under both the Research and Model Programs, for any activity authorized under Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441-1442)

[46 FR 31998, June 18, 1981]

APPENDIX

GUIDELINES—EDUCATION OF THE HANDICAPPED ACT—PART E

Handicapped Children's Model Programs

SECTIONS 641-644—RESEARCH IN THE EDUCATION OF THE HANDICAPPED

PART 1—INTRODUCTION

Sec.
1.1 Scope of guidelines.

PART 2—ACTIVITIES APPROPRIATE FOR SUPPORT

2.1 Authority.

PART 3—PROJECTS

3.1 Initiation of projects.
3.2 Preparation of applications.

PART 1—INTRODUCTION

§ 1.1 *Scope of guidelines.*

(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, Sections 641-644. The legal requirements include the Act itself (20 U.S.C. 1441-1444) and the regulations (34 CFR 324). The guidelines are not to be construed as requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1444, 113 Cong. Rec. 5936, 5939 (daily ed. May 23, 1967); *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 857 (1966))

(b) Where a guideline is issued in connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guidelines in the parentheses following the guideline. For example, if the legal authority for the guidelines is Section 642 of the Act (20 U.S.C. 1442 and the guidelines affect § 324.2 of the regulation (34 CFR 324.2), the following citation will be placed on the line immediately following the guideline: (20 U.S.C. 1442; 34 CFR 324.2).) If no particular section of the regulation is affected, no citation to the Code of Federal Regulations (CFR) will be made.

(20 U.S.C. 1232(a))

PART 2—ACTIVITIES APPROPRIATE FOR SUPPORT

§ 2.1 *Authority.*

(a) The greatest part of the research responsibility of the Bureau of Education for the Handicapped falls under Part E of the Act, but other research activities are authorized under Sections 624(a)(1), 651(a)(2)(A) and 652(b)(5), of the Act.

(b) Legislative authority for the activities described above is included in connection with the following parts of the Education of the Handicapped Act, Pub. L. 91-230:

(1) Part C, Section 624(a)(1): Research in connection with Centers and Services for the Handicapped (20 U.S.C. 1424);

(2) Part E, Section 641: Model Programs and Research and Demonstration Projects in Education of Handicapped Children (20 U.S.C. 1441);

(3) Part E, Section 642: Research and Demonstration Projects in Physical Education and Recreation for Handicapped Children (20 U.S.C. 1442);

(4) Part F, Section 651(a)(2)(A) and 652(b)(5): Instructional Media for the Handicapped (20 U.S.C. 1451-1452).

(c) The research activities in (b)(1) and (4) above are subject to the regulations (34 CFR 324.1(b), 324.6 and 324.7, only) and guidelines for Part E of the Act.

(20 U.S.C. 1424, 1441, 1442, 1451 and 1452; 34 CFR 324.1)

PART 3—PROJECTS

§ 3.1 [Reserved]

§ 3.2 *Preparation of applications.*

(a) Model programs applications may describe in detail the services and activities envisioned for the first year and indicate general plans for two subsequent years. It is helpful for the reader or reviewer to be able to visualize the project in action as much as possible. It is suggested that applicants describe plans and the procedures to be used as completely as possible; realizing that readers can make no assumptions and must rely on the information contained in the proposal. It is helpful to those readers who are not familiar with the applicant, for the proposal to contain clear ideas concerning what is planned, how it will be accomplished and who will accomplish it. If planning is incomplete, it is suggested that plans be stated in sufficient detail, or examples be provided, which explain how the applicant intends to develop the incomplete area(s).

(b) It is suggested that applications include the following features:

(1) *Abstract.* It is suggested that a summary abstract of the planned activities be included with the proposal. Its contents may contain such components as objectives, activities and expected outcomes of the project. It may also specify the number and handicapping condition(s) of children to be served, the setting in which the services will be offered, and a description of the applicant. Additional items may be included within the single page limit.

(2) *Model justification*—(i) *Description of model program.* It is suggested that the general description of the program include a discussion of the theoretical and practical considerations leading to the development of the proposed model, how the services will be integrated into the spectrum of those currently available in the region for handicapped children, and the potential benefits to the handicapped children served by the project and to handicapped children generally.

(ii) *Population to be served.* It is suggested that the applicant provide a description of the population of handicapped children to be served; including the handicapping condition(s), degree of range of severity of handicap(s), age and other relevant demographic characteristics. It is suggested that the minimum number of children to be served during the first year be determined according to the handicapping condition(s). A project may serve one or a variety of types of handicapped children; one or a variety of age groups.

(iii) *Justification for consideration as a model.* It is suggested that the applicant specify the characteristics of the proposed project which make it eligible for consideration as a "Model". (See § 324.5 of the regulations for this program.) The justification may include, but is not limited to, one or more of the following forms:

(A) A review of the professional literature supporting the proposed project design on a theoretical or practical basis.

(B) A review of other similar/related programs and an analysis of their effectiveness and their applicability to the population to be served.

(C) Legal or legislative citations of need for the proposed program model.

(D) A description of any special demographic, socio-economic or service delivery characteristics which indicates the need for the development of the proposed program model.

(3) *Model planning and development.*

(i)—(iv) [Reserved]

(v) *Record-keeping system.* Applicants should describe the record-keeping system which will be used in the model program. This description may include reference to the types of records which will be kept and how the record-keeping system will be organized and used. The following types of records represent the minimum components of the record-keeping system: The child's individual educational program, changes in the educational program, and data demonstrating changes in a child's performance.

(vi) *Coordination of services.* Applicants should develop a plan for coordinating the services provided through the model program with the services which other agencies provide to the children. This plan may include an exchange of services between the model program and other agencies to ensure that the children receive comprehensive services but that duplication of efforts is avoided. The plan may also include opportunities for interaction between the staff of the model program and the staff of the other agencies offering similar and/or related services. The applicants may describe the relationship of the model program to State and local plans for services to handicapped children. A description of cooperating agencies may be appended to the proposal.

(vii) *Project financial plans.* Applicants should present a long-range plan for financing the model program. This may include a description of non-Federal support to the project during the funding period. It is the intent of the Handicapped Children's Model Programs to provide Federal support for projects which, after 3 years, will be continued and/or replicated through State, local or other support. Therefore, it is suggested that applicants describe how the project will be financed when Federal support is discontinued.

(4) *Model implementation*—(i) *Identification and assessment of handicapped children.* The applicant should state the criteria used to determine whether a child is handi-

capped, identify the personnel responsible for the assessment process, and specify the criteria employed to select students for project services. It is suggested that this section discuss the following items:

Approach to initial assessment.

Referral agencies and types of professionals involved in referral process.

Norm-referenced, criterion-referenced, or curriculum-based tests and/or observational procedures used to determine the entering skills or developmental level of the child.

Provisions for direct and frequent ongoing assessment of student progress.

Guidelines for making program changes based on the on-going student performance data.

A description of the approximate level of functioning of students to be served by the program.

A description of parental/family involvement in the assessment and/or procedures for explaining the results of the assessment to the parents.

A description of how assessment procedures will take into account cultural or language differences. (Although screening, identification, and assessment of children with handicaps may be a component of the project, the demonstration of educational services is the central focus.)

Procedures for the identification of the handicapped children. (These procedures may, where appropriate, include activities in cooperation with Child Find Programs operated through the State Department of Education.)

(ii) *Instructional intervention*—(A) *Curriculum.* The applicant is encouraged to specify curriculum content. It is suggested that the selection of the curriculum be justified by reference to appropriate literature citations. It is suggested that any plan for curriculum development and validation be detailed.

(B) *Methodology.* It is suggested that the general approach of the instructional methodology to be used in the project be discussed. This section may focus on the techniques the teachers will be using in the direct instruction of the child. Examples of the approach may be included as part of the narrative.

(C) *Delivery of service.* The applicant is encouraged to describe the service delivery model to be employed by the project. The description may identify the procedures for coordinating input from multiple disciplines and discuss the extent to which program activities interface with regular educational programs, community and home-living programs and/or vocational programs.

(iii) *Individualized Educational Programs (IEPs).* It is suggested that the proposal describe the process that will be used to develop individualized educational programs and the procedures for evaluating them. It is suggested that methods for development of the program conform to guidelines set forth by the State Education Agency. Goals and objectives established in the IEPs should be related to the results of the initial assessment. It is suggested that a sample individualized educational program prepared for a child representative of the students to be served by the program be included.

(iv) *Supplementary services.* The applicant is encouraged to provide a brief description of ancillary and/or supportive services to the target population. The description may include the types of agencies providing these services, specific nature of the services, rationale for the services and financial and administrative responsibility for the services.

(v) [Reserved]

(vi) *Parent-family participation.* It is suggested that the proposal contain plans for involvement of the parents of the handicapped child and other family members or family surrogates in the services to be provided by the project. It is suggested that the following services be made available by the applicant to parents and other family members or family surrogates as needed:

Assistance in understanding and coping with the child's handicap and associated problems.

Psychological or social work services.

Information or training in special education techniques for instruction and management.

Observation and/or work with the children in the project.

Development of activities that can be implemented at home, based on home-related needs.

Assistance in obtaining services from other agencies.

Assistance in follow-up services including school, vocational, or job placement.

(vii) *Advisory committee.* It is suggested that each project establish an advisory committee which will assist actively in the projects: (1) Planning, development, and operation; (2) dissemination of information; (3) evaluation of progress and success; and (4) securing of continuation funding. The proposal may describe how the advisory committee will be established, the specific functions it will perform, and the number of scheduled times it will meet annually. The membership may include parents of students to be served by the project and may include local public school personnel experts in the education of handicapped children and adults, persons from related fields such as health, social work, mental health, and medicine, as well as persons with experience in public service. The proposal may identify persons and/or positions of persons who will be available and who are qualified to perform the functions of the advisory committee. The following information may be provided by the project to each member of the advisory committee: (1) A copy of the rules and regulations pertaining to this program; (2) a copy of the project proposal; and (3) additional information relating to the project that will assist the member in performing the functions of the committee.

(5) [Reserved]

(6) *Model extension*—(i) *Dissemination.* It is suggested that the proposal provide a detailed description of how dissemination of the project will be accomplished. Applicants are encouraged to include information on the following in the dissemination plan:

Kind and number of people to whom dissemination activities will be targeted.

Method(s) by which such audiences will be made aware of the project and encouraged to observe it.

Steps to be taken that will result in organizing and packaging project components and/or materials so they are transportable for use in other communities. Projects planning to package such items as a handbook of project procedures, evaluation manual or parent/family participation materials may indicate the kind of materials they anticipate will result from the project.

The dissemination component may be directly related to the program's justification for consideration as a model.

(ii) *Replication.* It is suggested that the description of the replication activities include the types of agencies that would be receptive to the model program, some evidence of this receptiveness, and an estimate of the number of agencies that may adopt the model during a second and/or third year of the project cycle. It is suggested that the proposal contain a description of all actions to be taken and products to be developed to stimulate target agencies to replicate the model program. Federal funds may be used to initiate components of the strategy. A description of the proposed part of the replication system that could be strengthened or developed with Federal funds to facilitate the development of the model system may be included in the proposal. It is suggested that the application include the approximate cost on a per year basis for the partial support of the replication strategy.

(20 U.S.C. 1441, 1442; 34 CFR 324.7)

[43 FR 36634, Aug. 18, 1978, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

Subpart A—General

Sec.
330.1 Captioned films loan service for the deaf program.
330.2 Who is eligible to apply under the captioned films loan service for the deaf program?
330.3 What regulations apply to the captioned films loan service for the deaf program?
330.4 What definitions apply to the captioned films loan service for the deaf program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

330.30 How does one apply for the use of loan service?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

330.50 What are the limitations on use of the loan service?

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52130, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 330.1 Captioned films loan service for the deaf program.

The Captioned Films Loan Service for the Deaf Program promotes the general welfare of deaf persons by—

(a) Bringing to deaf persons understanding and appreciation of those films that play an important part in the general and cultural advancement of hearing persons;

(b) Providing enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment; and

(c) Providing a wholesome and rewarding experience that deaf persons may share together.

(20 U.S.C. 1451)

§ 330.2 Who is eligible to apply under the captioned films loan service for the deaf program?

The following are eligible to apply to borrow captioned films:

(a) Deaf persons.

(b) Parents of deaf persons.

(c) Other persons directly involved in activities promoting the advancement of deaf persons in the United States.

(20 U.S.C. 1452(a))

§ 330.3 What regulations apply to the captioned films loan service for the deaf program?

The following regulations apply to the Captioned Films Loan Service for the Deaf Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 330.

(20 U.S.C. 1451-1453)

§ 330.4 What definitions apply to the captioned films loan service for the deaf program?

(a) *Definitions in EDGAR.* The following term used in these regulations are defined in 34 CFR Part 77:

Nonprofit

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Borrower" means a user of loan service media.

"Deaf person" means a person whose hearing is so severely impaired as not to be correctable to a functional level for the ordinary activities of living.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"Theatrical films" means films produced for showing in a commercial setting as entertainment and not those primarily developed for use in a formal program of instruction.

(20 U.S.C. 1451, 1452)

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

§ 330.30 How does one apply for the use of the loan service?

Eligible parties should contact the Division of Educational Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing captioned films.

(20 U.S.C. 1452)

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

§ 330.50 What are the limitations on use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only.

(b) (1) A borrower shall ensure that no fee is charged to anyone for using the films.

(2) However, a borrower may collect funds for—

(i) The payment of resonable rent for the use of equipment;

(ii) The payment of reasonable costs for a meeting place for the showing of a film; and

(iii) The payment of reasonable fees to a projectionist.

(c) In accordance with agreements with producers and distributors, a borrower shall show theatrical films to deaf persons only. However, this does not exclude the attendance of teachers of the deaf, interpreters, parents, and occasional guests as long as the audience is composed predominantly of deaf persons.

(20 U.S.C. 1452 (a), (b)(1))

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

331.1 Educational media loan service for the handicapped program.
331.2 Who is eligible to apply under the educational media loan service for the handicapped program?
331.3 What regulations apply to the educational media loan service for the handicapped program?
331.4 What definitions apply to the educational media loan service for the handicapped program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

331.30 How does one apply for the use of loan services?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

331.50 What are the limitations on the use of the loan service?

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52131, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 331.1 Educational media loan service for the handicapped program.

The Educational Media Loan Service for the Handicapped Program makes educational media available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of handicapped persons.

(20 U.S.C. 1452(a))

§ 331.2 Who is eligible to apply under the educational media loan service for the handicapped program?

The following are eligible to apply to borrow educational media:

(a) Handicapped persons.

(b) Parents of handicapped persons.

(c) Other persons directly involved in activities for the advancement of handicapped persons in the United States.

(20 U.S.C. 1452(a))

§ 331.3 What regulations apply to the educational media loan service for the handicapped program?

The following regulations apply to the Educational Media Loan Service for the Handicapped Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 331.

(20 U.S.C. 1451-1453)

§ 331.4 What definitions apply to the educational media loan service for the handicapped program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Nonprofit

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Borrower" means a user of loan service media.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

(20 U.S.C. 1451, 1452)

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

§ 331.30 How does one apply for the use of loan services?

Eligible parties should contact the Division of Educational Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing educational media.

(20 U.S.C. 1452(a))

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

§ 331.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the educational media for nonprofit purposes only.

(b) A borrower shall ensure that no fee is charged to anyone for using the educational media.

(20 U.S.C. 1452(a))

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Subpart A—General

Sec.
332.1 Educational media research, production, distribution, and training program.
332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?
332.3 What regulations apply to the educational media research, production, distribution, and training program?
332.4 What definitions apply to the educational media research, production, distribution, and training program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

Sec.
332.10 Projects funded under the educational media research, production, distribution, and training program.

Subpart C—[Reserved]

Subpart D—How are Grants Made?

332.30 How does the Secretary establish priorities annually?
332.31 How does the Secretary evaluate an application?
332.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must be Met by a Grantee?

332.40 Final products.

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 332.1 Educational media research, production, distribution, and training program.

This program is designed to promote the educational advancement of handicapped persons by providing assistance for—

(a) Conducting research on the use of educational media for handicapped persons;

(b) Producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and

(c) Training persons in the use of educational media for the instruction of handicapped persons.

(20 U.S.C. 1451(a)(2))

§ 332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

(20 U.S.C. 1451, 1452))

§ 332.3 What regulations apply to the educational media research, production, distribution, and training program?

The provisions of 34 CFR Parts 75, 77 and this Part 332 apply to this program.

(20 U.S.C. 1221e-3(a)(1)

§ 332.4 What definitions apply to the educational media research, production, distribution, and training program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Secretary
Nonprofit
Public

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Distribution" means giving physical access to media and related materials and attendant equipment.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Media technology" means the methods and processes through which media are provided and encompasses demonstration of the use of modern communication technology in improving the general welfare of handicapped persons.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"Production" means creating or changing media materials.

"Training" means activities designed to develop facility in the use of media materials and technology and in dissemination and marketing practices.

(20 U.S.C. 1451, 1452)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 332.10 Projects funded under the educational media research, production, distribution, and training program.

Projects that may be supported include, but are not limited to the following:

(a) Research in the use of educational and training films and other educational media for handicapped persons. This may include research to—

(1) Identify the full range of special needs of handicapped persons related to educational media and media technology;

(2) Determine the need for—

(i) Educational media training;

(ii) Media information systems; and

(iii) Media delivery systems;

(3) Determine the extent to which the needs listed in paragraph (a)(2) of this section are being met; and

(4) Develop or demonstrate new or improved techniques that would contribute to the advancement and education of handicapped persons through the use of educational media or technology or both.

(b) Creation or adaptation of educational media for use by handicapped persons, their parents, their actual or potential employers, and other persons directly involved in activities for the advancement of handicapped persons.

(c) Distribution of educational media. This may include the development of delivery systems.

(d) Dissemination of information about practices found effective in regard to the effective use of educational media and technology.

(e) Training of persons in the use and dissemination of educational media for the advancement of handicapped persons.

(20 U.S.C. 1452(b)(5))

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

§ 332.30 How does the Secretary establish priorities annually?

(a) The Secretary may select a priority for funding from among those activities listed in § 332.10 by publishing a notice in the FEDERAL REGISTER.

(b) The Secretary may identify a particular handicapping condition or conditions as a priority for assistance under this program through publication of a notice in the FEDERAL REGISTER.

(20 U.S.C. 1451, 1452)

§ 332.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 332.32. The extent to which an applicant addresses a priority is considered under the *need* criterion of § 332.32(f).

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 1451)

§ 332.32 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(20 U.S.C. 1451, 1452)

[46 FR 3206, Jan. 14, 1981]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 332.40 Final products.

The Secretary may require any grantee engaged in the actual development of materials to submit up to one original and two copies of those materials.

PART 333—CENTERS FOR EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED PROGRAM

Subpart A—General

Sec.
333.1 Centers for educational media and materials for the handicapped program.
333.2 Who is eligible to enter into a contract under the centers for educational media and materials for the handicapped program.
333.3 What regulations apply to contracts for centers for educational media and materials for the handicapped program?
333.4 What definitions apply to centers for educational media and materials for the handicapped program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

333.10 What categories of activities may receive support?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Award a Contract?

333.40 What does the Secretary consider before entering into a contract under this part?

AUTHORITY: Sec. 653 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 94-142; 84 Stat. 187 (20 U.S.C. 1453), unless otherwise noted.

SOURCE: 45 FR 52133, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 333.1 Centers for educational media and materials for the handicapped program.

The Secretary awards contracts to establish and operate centers for educational media and materials for handicapped persons. These centers facilitate the use of new technology in educational programs for handicapped persons.

(20 U.S.C. 1453(a))

§ 333.2 Who is eligible to enter into a contract under the centers for educational media and materials for the handicapped program?

Parties eligible to enter into a contract under this program are institutions of higher education, State and local educational agencies, or other nonprofit agencies.

(20 U.S.C. 1453(a))

§ 333.3 What regulations apply to contracts for centers for educational media and materials for the handicapped program?

The following regulations apply to contracts under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 and 77.

(b) The regulations in this Part 333.

(20 U.S.C. 1451-1453)

§ 333.4 What definitions apply to centers for educational media and materials for the handicapped program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Award
Secretary
Local educational agency
State educational agency
Nonprofit

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Educational media" means those media used for educational purposes.

"Media technology" means the methods and processes through which media are provided and encompasses demonstration of the use of modern communication technology in improving the general welfare of handicapped persons.

(20 U.S.C. 1451, 1452)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 333.10 What categories of activities may receive support?

The Secretary may enter into contracts under this part to provide Federal funds to facilitate the use of educational technology through—

(a) The design of instructional materials;

(b) The development of instructional materials;

(c) The adaptation of instructional materials; or

(d) Other activities consistent with the purposes of this part.

(20 U.S.C. 1453(a))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Award a Contract?

§ 333.40 What does the Secretary consider before entering into a contract under this part?

In considering proposals to enter into contracts under this part, the Secretary gives preference to institutions and agencies—

(a) That have domonstrated the capabilities necessary for the development and evaluation of educational media for handicapped persons; and

(b) That can serve the educational technology needs of the Model High School for Deaf Persons (established under Pub. L. 89-864).

(20 U.S.C. 1453)

PART 338—REGIONAL EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

Subpart A—General

Sec.
338.1 Scope.
338.2 Definition of handicapped persons.
338.3 Purpose.
338.4 Eligible parties.
338.5 Regulations that apply to Regional Education Programs for Handicapped Persons.

Subpart B—Applications; Activities

Sec.
338.15 Application requirements.
338.16 Initial year application.
338.17 Priorities.
338.18 Selection criteria.
338.19 Services, activities, and resources to be supported.
338.20 Auxiliary activities.

AUTHORITY: Section 625 of Pub. L. 91-230, as amended, 88 Stat. 584 (20 U.S.C. 1424a), unless otherwise noted.

SOURCE: 41 FR 24126, June 15, 1976, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 338.1 Scope.

(a) This part applies to programs funded under section 625 of the Act.

(20 U.S.C. 1421a)

[41 FR 24126, June 15, 1976, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 338.2 Definition of handicapped persons.

For the purposes of this part, the term "handicapped persons" means persons who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, or in other ways health impaired and by reason thereof require special education programming and related services.

(20 U.S.C. 1424a(c))

§ 338.3 Purpose.

Payment of Federal funds under this part may be made to eligible parties for the development and operation of specially designed or modified programs of vocational, technical, postsecondary, or adult education for deaf or other handicapped persons.

(20 U.S.C. 1424a(a))

§ 338.4 Eligible parties.

Parties eligible to receive Federal funds under this part are institutions of higher education, including junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

(20 U.S.C. 1424a(a))

§ 338.5 Regulations that apply to Regional Education Programs for Handicapped Persons.

(a) *Regulations.* The following regulations apply to Regional Education Programs for Handicapped Persons:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 338.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs, and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Applications; Activities

§ 338.15 Application requirements.

Applications for funds under this part must contain the following information:

(a) A description of the handicapping conditions of the persons to be served;

(b) Specification of the resources and services needed by the handicapped persons to be served which will assist in the successful integration of those handicapped persons into a nonhandicapped school population and regular educational program;

(c) A plan for provision of an integrated comprehensive range of services and resources specified in paragraph (b) of this section to assist handicapped participants in competing academically with nonhandicapped students;

(d) Provision for a survey covering the geographical area from which potential participants in the program will be drawn, and assessment of the needs of such participants;

(e) A description of the procedures and resources which will be used to determine and provide the services necessary to meet the special individual needs of each handicapped person who will participate in the program.

(20 U.S.C. 1424a)

[41 FR 24126, June 15, 1976, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 338.16 Initial year application.

An initial year application for funds under this part shall contain, in addition to the information required under § 338.15, the following:

(a) A description of the geographical region or regions or population centers to be served, including the demographic characteristics.

(b) The anticipated number of handicapped participants to be served in the program who currently are not being provided with an appropriate and/or adequate education program.

(c) The estimated number of handicapped persons to be served annually under the program.

(d) The criteria which will be used to determine whether a person is handicapped for purposes of participating in the program.

(e) A description of sources of support and supplementary services such as housing, health care, and recreation, which will be available for use in the program.

(f) A description of how the requirement under 34 CFR 75.580 of EDGAR (Coordination with other activities) will be met.

(g) A plan for long range funding which includes strategies for increasing the amount of funds for the program from sources other than under this part.

(20 U.S.C. 1424a)

[41 FR 24126, June 15, 1976, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 338.17 Priorities.

Priority consideration for Federal funds under this part will be given to:

(a) Programs serving multistate regions or large population centers;

(b) Programs adapting existing programs of vocational, technical, postsecondary, or adult education to the special needs of handicapped persons; and

(c) Programs designed to serve areas where a need for these services is clearly demonstrated.

(20 U.S.C. 1424a(b))

§ 338.18 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Whether the program will be carried out in facilities easily accessible to physically handicapped persons.

(g) Whether the program will be located in an area in which public transportation is readily available, or transportation will be provided at reasonable cost to handicapped persons participating in the program.

(h) Whether the program will serve handicapped persons for whom other appropriate education programs are not readily available.

(i) The likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding as measured by evidence of financial and other commitment of the applicant to the program and other funds available to the program.

(20 U.S.C. 1424a)

[46 FR 5381, Jan. 19, 1981]

§ 338.19 Services, activities, and resources to be supported.

(a) *Illustrative services.* The following is an illustrative list of the types of resources, services, and activities which may be supported (in whole or in part) under this part:

(1) Interpreters;

(2) Tutors;

(3) Notetakers and readers;

(4) Wheelchair attendants;

(5) Guidance counselors;

(6) Auditory training;

(7) Job placement and followup;

(8) Preparatory and orientation services;

(9) Supplementary learning experiences;

(10) Instructional media;

(11) Inservice training relating to the handicapped participants in the program, for teachers and other educational staff;

(12) Administrative expenses such as employment of a director, administrator, or coordinator for the program; and

(13) Planning and evaluation activities.

(20 U.S.C. 1424a)

(b) *Tuition.* Federal funds provided under this part shall not be used for the payment of tuition or subsistence allowances.

(20 U.S.C. 1404, 1424a)

[41 FR 24126, June 15, 1976, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 338.20 Auxiliary activities.

(a) Applications for Federal funds under this part shall specifically state any activities which an applicant intends to undertake pursuant to section 624 of the Act.

(b) Research activities under section 624(a)(1) of the Act are subject to applicable requirements contained in §§ 324.1(b), 324.4, and 324.7 of this chapter, as well as applicable provisions contained in Part 300 of this chapter.

(20 U.S.C. 1424, 1424a)

PART 345—GIFTED AND TALENTED CHILDREN'S EDUCATION PROGRAM: GENERAL

Subpart A–General

Sec.

345.1 What is the Gifted and Talented Children's Education Program?
345.2 What is the State-administered program?
345.3 Who is eligible for funds under the State-administered program?
345.4 What is the discretionary grant program?
345.5 Who is eligible for funds under the discretionary grant program?
345.6 What regulations apply to the Gifted and Talented Children's Education Program?
345.7 What definitions apply to this program?
345.8 What characteristics must a project involving children have?
345.9 Must a State or local educational agency provide an opportunity for private school students to participate?

AUTHORITY: Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 229, unless otherwise noted.

(20 U.S.C. 3311-3318)

SOURCE: 45 FR 22694, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 345.1 What is the Gifted and Talented Children's Education Program?

(a) The Gifted and Talented Children's Education Program provides financial assistance through—

(1) A State-administered program; and

(2) Discretionary grants and contracts awarded by the Secretary.

(b) The program is designed to—

(1) Meet the special educational needs of the Nation's gifted and talented children; and

(2) Enable these children to fulfill their potential both as individuals and as a resource to the Nation.

(20 U.S.C. 3311-3318)

§ 345.2 What is the State-administered program?

(a) The Secretary provides financial assistance to State educational agencies (SEAs) to plan, develop, operate, and improve programs to meet the needs of gifted and talented children at the preschool, elementary, and secondary levels.

(20 U.S.C. 3314)

(b) SEAs shall use at least 90 percent of the funds awarded under the State-administered program to make competitive awards to local educational agencies (LEAs) for projects that meet the educational needs of gifted and talented children. Such projects may include components for in-service training.

(20 U.S.C. 3314(c)(2)(B))

(c) From the remaining 10 percent the SEAs—

(1) Shall provide technical assistance to LEAs—which are unable to compete due to smaller size or lack of financial resources—in preparing proposals and in planning, developing, and operating programs under this section; or

(2) May provide Statewide planning and coordination, administration, or in-service training designed to meet the special educational needs of gifted and talented children.

(20 U.S.C. 3314(c)(2)(A))

§ 345.3 Who is eligible for funds under the State-administered program?

The following are eligible:

(a) (1) SEAs if the appropriation in any year is under $15,000,000.

(2) For purposes of this paragraph SEAs include the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Is-

lands, and the Northern Mariana Islands.

(20 U.S.C. 3314)

(b) If the appropriation in any year exceeds $15,000,000, SEAs, (defined as the several States, the District of Columbia and the Commonweath of Puerto Rico), and schools for Indian Children operated by the Department of the Interior, dependent schools of the Department of Defense, Guam, American Samoa, the Virgin Islands, the Trust Territories of the Pacific Islands, and the Northern Mariana Islands.

(20 U.S.C. 3316)

§ 345.4 What is the discretionary grant program?

The discretionary grant program assists in establishing and maintaining projects to plan, develop, operate, demonstrate and improve programs to meet the special educational needs of gifted and talented children, including the training of personnel engaged in the education of gifted and talented children or supervision of such personnel.

(20 U.S.C. 3315(a))

§ 345.5 Who is eligible for funds under the discretionary grant program?

Under the discretionary program, the Secretary makes grant awards—

(a) For statewide activities grants to SEAs, and

(b) For all other types of projects, the Secretary makes grant awards to—

(1) SEAs;

(2) LEAs;

(3) Institutions of higher education;

(4) Other public and private organizations; or

(5) Combinations of the above.

(c) The Secretary may also enter into contracts with public or private agencies or organizations to operate model projects, disseminate information, or conduct research. Contracts are not covered by these regulations.

(20 U.S.C. 3315(a)(1), (2), (3), (4), (b))

§ 345.6 What regulations apply to the Gifted and Talented Children's Education Program?

(a) *Regulations.* The following regulations apply to the Gifted and Talented Children's Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 76 (State-Administered Programs), and 34 CFR Part 77 (Definitions).

(2) The regulations in this part.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77:

Applicant
Application
Award
Budget
Secretary
Local educational agency (LEA)
Nonprofit
Private
Preschool
Project
Public
State educational agency (SEA)

(20 U.S.C. 1232(a))

§ 345.7 What definitions apply to this program?

As used in these regulations—

"Act" means the Gifted and Talented Children's Education Act of 1978, Title IX-A of the Elementary and Secondary Education Act (ESEA) of 1965 as amended by Pub. L. 95-561.

(20 U.S.C. 3311-3318).

"Child"—including the term "youth"—means any individual from birth through 18 years of age.

"Differentiated or specialized educational services" means instruction or other services designed to—

(a) Meet the special educational and related needs of each gifted and talented child; and

(b) Provide curriculum which incorporates appropriate cognitive and affective content which exceeds the instruction or services regularly provided to the average student and enhances the unique learning abilities of each gifted and talented child.

"Disadvantaged children from low-income families," for purposes of meeting the requirement, shall be children defined by the SEA using either of the following:

(1) The low-income criteria in Title I of ESEA, or

(2) Any other equitable alternate low-income definition that the SEA promulgates or commonly uses on a statewide basis.

"Gifted and talented child" means a child, who has been identified at preschool, elementary, or secondary level and who—

(a) Demonstrates actual or potential high performance capability in areas such as in intellectual, creative, specific academic, or leadership ability or in the performing or visual arts; and

(b) Requires specialized education or services not ordinarily provided by the school;

(20 U.S.C. 3312)

"Indian tribe" means any Federal or State recognized tribe, band, nation, rancheria, pueblo, Alaskan native village—or regional or village corporation as established by the Alaska Native Claims Settlement Act—that exercises the power of self-government.

(20 U.S.C. 3317(b); 45 CFR 187.2)

"Local educational agency" for purposes of this part includes an Indian tribe that operates schools for its children;

(20 U.S.C. 3317(b))

"State," for purposes of the award of funds under section 904 of the Act, means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 3381(j))

§ 345.8 What characteristics must a project involving children have?

(a) Any project that involves the participation of gifted and talented children must use comprehensive and multiple methods for identifying and assessing the needs of those children. No child shall be denied participation in a projection on the basis of only one method of identification. Methods of identification are—

(1) *Comprehensive*, if they are sufficiently broad to assess children who—

(i) May come within the service category addressed by the project, including those who are economically disadvantaged, handicapped, or culturally different; and

(ii) Are in the geographic area to be served by the project; and

(2) *Multiple*, if they involve not fewer than two methods of identification, such as teacher nomination, measures of creativity, peer nomination, intelligence tests, evaluations adapted to the child's cultural norm, or other innovative strategies for identification. For all identification instruments or strategies, the applicant shall demonstrate a logical connection between those instruments or strategies and the purposes of the project.

(b) *Instructional component*. Any project that involves an instructional component shall provide differentiated or specialized educational services.

§ 345.9 Must a State or local educational agency provide an opportunity for private school students to participate?

If an SEA or LEA receives a grant under this program, the Act requires that agency to provide for participation by students and teachers enrolled in private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, § 75.650 et seq.).

(20 U.S.C. 3314(c)(5)(B)), 3315(b)(2), 3086)

PART 346—GIFTED AND TALENTED CHILDREN'S EDUCATION: STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

346.1 What general provisions apply to this program?

Subpart B—How Does a State Obtain a Grant?

346.10 What documents must an SEA file with the Secretary?
346.11 What must the State application contain?

Subpart C—How is a Grant Made to a State?

346.20 How is the amount of a State's grant determined?

Sec.
346.21 What evaluation criteria does the Secretary use to review applications for annual competitive State grants?

Subpart D—How Is a Subgrant Made to an LEA?

346.30 How does an LEA apply to an SEA for a grant?
346.31 May the SEA award a multi-year subgrant to an LEA?

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

346.40 Are there restrictions on the types of costs a grant may support?
346.41 Allowable costs.

AUTHORITY: Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 2292, unless otherwise noted.

(20 U.S.C. 3311-3318)

SOURCE: 45 FR 22696, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 346.1 What general provisions apply to this program?

The provisions of Subpart A of Part 345 (§ 345.1 through § 345.9) apply to the State-administered programs under this part.

Subpart B—How Does a State Obtain a Grant?

§ 346.10 What documents must an SEA file with the Secretary?

(a) To receive a minimum allotment an eligible applicant shall submit an application and file it with the Secretary.

(1) At the minimum the application shall contain the assurances required by—

(i) The provisions governing single State applications contained in EDGAR except that § 76.101(e)(7)(ii) pertaining to Statewide circulation of the plan and § 76.105 pertaining to governor's review do not apply to applications for fiscal year 1980 funds; and

(ii) By this Act and these regulations.

(20 U.S.C. 1232d(b) and 3314(b)(1) and (c))

(2) A State must revise and resubmit its application for a minimum allotment every three years.

(b) To apply for a competitive award a State shall submit on an annual basis additional information—in a clearly designated section of its application—that responds to the criteria in § 346.21 and the application to a notice published in the FEDERAL REGISTER.

(20 U.S.C. 3314(b)(1); H. Rept. No. 95-1753 at page 282)

§ 346.11 What must the State application contain?

(a) A State application shall contain a plan for making subgrants on a competitive basis to LEAs to meet the educational needs of gifted and talented children.

(b) This plan shall set forth separately—

(1) Criteria for awarding not less than 50 percent of the funds available to the State to LEAs for projects that include a component for identifying and serving the special educational needs of gifted and talented children from low income families; and

(20 U.S.C. 3314(c)(3))

(2) Criteria for awarding at least 90 percent of the funds available under this program to LEA projects that are directed toward serving the special educational needs of gifted and talented children. The remaining funds—up to 10 percent—may be used by the State for such purposes as administration, technical assistance, coordination, statewide planning, and in-service training.

(20 U.S.C. 3314(c)(2))

Subpart C—How Is a Grant Made to a State?

§ 346.20 How is the amount of a State's grant determined?

There are two ways the Secretary determines a State's grant:

(a) If the appropriation for the Act is less than $15 million, the Secretary awards—

(1) A $50,000 allotment to each eligible applicant submitting an approved

general application subject to a ratable reduction based on the appropriations; and

(2) Additional amounts on a competitive basis, if the amount appropriated is greater than the total required to pay the $50,000 allotment to each applicant State.

(20 U.S.C. 3314(b)(1); H. Rept. 95-1753, (page 282))

(b) If the appropriation for the Act exceeds $15 million, the Secretary allots funds to each eligible applicant submitting an approved general application according to proportion of the number of children aged 5 to 17 in the State compared to the total number in the 50 States, Puerto Rico, and the District of Columbia.

(1) Not more than one percent of the State administered program funds shall be awarded to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, elementary and secondary schools operated for Indian children by the Department of the Interior, and dependent schools of the Department of Defense.

(2) The Secretary may reallot funds among States at times established through publication of a notice in the FEDERAL REGISTER, whenever a State does not fully use its allotment.

(3) The Secretary considers reallotting funds from States that carry over more than 15 percent of a prior year's allotment.

(20 U.S.C. 3314(b)(2); 3316)

§ 346.21 What evaluation criteria does the Secretary use to review applications for annual competitive State grants?

The Secretary reviews an application for competitive funds on the basis of the criteria in this section totalling 100 possible points. The maximum possible score appears next to the heading of each criterion and indicates the relative importance assigned to that criterion by the Secretary.

(a) *Comprehensive approach.* (25 points) The extent to which an SEA proposes comprehensive methods of identifying and meeting the special educational and related needs of gifted and talented children throughout the State under the competitive LEA grant process.

(b) *Planning.* (15 points) The extent to which an SEA ensures the involvement of persons and organizations in both the public and private sectors in the development of procedures for awarding funds to LEAs.

(c) *Technical assistance.* (20 points) The quality and type of technical assistance that the SEA proposes to provide to LEAs which are unable to compete due to smaller size or lack of financial resources in planning, developing, and operating LEA projects.

(d) *Administration.* (15 points) The quality of the State's proposed plan and procedures for awarding subgrants to LEAs for projects to identify and meet the special educational needs of gifted and talented children.

(e) *Disadvantaged.* (10 points) The quality of the SEA's plan to ensure that 50 percent of its funds will be awarded on a competitive basis to LEAs that have projects which contain a component to identify and serve the educational needs of disadvantaged gifted and talented children from low-income families.

(f) *Coordination.* (15 points) The quality of the State's plan to coordinate and monitor LEA activities or projects for gifted and talented children and to disseminate the results of these activities or projects.

(20 U.S.C. 3314 (b)(1), (c))

Subpart D—How Is a Subgrant Made to an LEA?

§ 346.30 How does an LEA apply to an SEA for a grant?

An LEA submits an application to an SEA according to the procedures and requirements set out in the approved State application.

(20 U.S.C. 3314(c)(2)(B))

§ 346.31 May the SEA award a multi-year subgrant to an LEA?

(a) A State may not award a subgrant to an LEA for more than five years to achieve the purposes of an LEA's project.

(b) If an LEAs initial application proposes a project requiring more than one year for completion, the LEA shall provide the State with budget projections for each year after the initial year.

(c) For approved multi-year projects, the LEA shall file continuation applications with the State for funding each year after the first year.

(20 U.S.C. 3317(c))

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 346.40 Are there restrictions on the types of costs a grant may support?

Funds may not be used for—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Stipends, transportation, or meals for participants in in-service training activities.

(20 U.S.C. 1221e-3(a)(1))

§ 346.41 Allowable costs.

The following costs are allowed:

(a) If a project involves an internship, the payment to each participant of an allowance that is not in excess of the entering salary for professionals in the agency or institution in which the participant is placed.

(b) If the project involves a graduate fellowship, the payment of a stipend, tuition, and fees.

(c) (1) If the project involves in-service or national leadership training, the payment of tuition and fees for university or college courses in education of the gifted and talented; and

(2) If the project involves in-service training, the payment of reasonable costs for substitutes and for release time.

(20 U.S.C. 3315 (a)(1), (a)(2))

PART 347—GIFTED AND TALENTED CHILDREN'S EDUCATION PROGRAM: DISCRETIONARY GRANT PROGRAM

Subpart A—General

Sec.
347.1 What general requirements apply to this program?

Subpart B—What Kind of Projects Does the Department Assist?

347.10 Does the Secretary establish priorities?
347.11 On what types of activities may a Statewide activities project focus?
347.12 On what types of activities may an educational service or model project focus?
347.13 On what types of activities may a professional development project focus?

Subpart C—How Does An Applicant Apply for a Grant?

347.20 How to apply for a grant.

Subpart D—How Is a Grant Made?

347.30 How does the Secretary evaluate an application?
347.31 What selection criteria does the Secretary use to evaluate Statewide activities?
347.32 What selection criteria does the Secretary use to evaluate all other applications?

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the Grantee?

347.50 Are there restrictions on the types of costs a grantee may support?
347.51 Allowable costs.
347.52 May an applicant apply for a multiyear grant?
347.53 Must an LEA give the public an opportunity to comment on its application?

AUTHORITY: Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 2292 (20 U.S.C. 3311-3318), unless otherwise noted.

SOURCE: 45 FR 22697, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 347.1 What general requirements apply to this program?

The provisions of Subpart A of Part 345 (§§ 345.1 through 345.9) apply to the discretionary grant programs under this part.

Subpart B—What Kind of Projects Does the Department Assist?

§ 347.10 Does the Secretary establish priorities?

The Secretary establishes programmatic priorities for funding from among the types of activities listed in §§ 347.11, 347.12, and 347.13. In any given year the Secretary announces—through publication of an application notice in the FEDERAL REGISTER—which of these types of activities will be funded.

(20 U.S.C. 3315)

§ 347.11 On what types of activities may a Statewide activities project focus?

A statewide activities project may be designed to accomplish one or more of the following:

(a) Develop a comprehensive statewide approach to meet the needs of gifted and talented students.

(b) Involve representatives of parent groups and other public and private organizations interested in education of gifted and talented students.

(c) Develop innovative strategies to identify and serve gifted and talented children, particularly the economically disadvantaged, the handicapped, or those with culturally different backgrounds;

(d) Provide technical assistance to help public and private schools within the State identify and meet the needs of gifted and talented students in those schools.

(e) Conduct surveys to determine the programs required to meet the needs of gifted and talented children in the state;

(f) Provide a State coordinator or other official who has responsibility for development, improvement, coordination, and delivery of State services with respect to programs for the gifted and talented in local educational agencies.

(g) Develop and implement an in-service training program to train local educational personnel in the administration of appropriate and comprehensive methods for the identification and education of gifted and talented children.

(20 U.S.C. 3315(a)(5))

§ 347.12 On what types of activities may an educational service or model project focus?

(a) An educational service or model project is principally designed to provide direct educational services to gifted and talented children. The project shall—

(1) Provide innovative, demonstration, or model approaches to educating gifted and talented students or particular categories of those students; or

(2) Operate, expand, or improve existing educational projects to meet the educational needs of gifted and talented students.

(b) An educational service or model project—in addition to meeting the educational needs of the gifted and talented—shall, as appropriate—

(1) Be capable of stimulating similar services and projects by being cost-effective and replicable;

(2) Provide project related in-service training for educational personnel;

(3) Involve persons and organizations outside the school in the planning and operation of the project;

(4) Be based on an existing high quality program that is addressing major needs in identification of and delivery of services to gifted and talented students;

(5) Focus services on special populations of the gifted and talented such as bilingual, early childhood, handicapped, economically disadvantaged, migrant, rural, native American, and/or culturally different; or

(6) Focus on a particular category of educational service, such as early childhood education, arts education, or other category of service.

(20 U.S.C. 3315(a)(1) and (3))

§ 347.13 On what types of activities may a professional development project focus?

A professional development project shall—

(a) Provide graduate level instruction leading to a degree in gifted and talented education;

(b) Provide a variety of short-term courses and instruction, focusing on the education of gifted and talented children;

(c) Provide seminars and other high-level opportunities for leaders in education, public affairs, industry, and related fields to interact with and promote the professional development of potential leaders in the education of gifted and talented students;

(d) Provide internships or similar, practical, training experience through public or private agencies involved with gifted and talented children;

(e) Provide in-service training for personnel engaged in the education of gifted and talented children or in the supervision of such personnel;

(f) Provide workshops and conferences for SEAs, LEAs, boards of education parents, business and community groups, and other interested parties on issues related to educating gifted and talented students; or

(g) Develop specialized training materials for use by SEAs, LEAs, and other agencies or groups involved in training leaders in the education of gifted and talented students.

(20 U.S.C. 3315(a)(1), (2))

Subpart C—How Does an Applicant Apply for a Grant?

§ 347.20 How to apply for a grant.

The Secretary makes a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) The regulations in this part that govern discretionary grants;

(b) The applicable provisions in Part 75 of EDGAR;

(c) The procedures and priorities contained in the notices published in the FEDERAL REGISTER; and

(d) The instructions and forms included in the application package.

Subpart D—How Is a Grant Made?

§ 347.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application—

(1) For statewide activities projects on the basis of the criteria in § 347.31.

(2) For all other discretionary projects on the basis of the criteria in § 347.32.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses next to the heading of that criterion.

§ 347.31 What selection criteria does the Secretary use to evaluate Statewide activities?

(a) *Plan of operation.* (35 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide in accordance with the project's objectives equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; or

(D) The elderly.

(b) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section, plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3315(a)(5))

§ 347.32 What selection criteria does the Secretary use to evaluate all other applications?

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide in accordance with project's objectives equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; or

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in non-profit private schools.

(b) *Quality of key personnel.* (7 points)

(1) The Commisioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section, plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons;

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Level and quality of program.* (25 points)

The Secretary looks for information that shows the extent to which the applicant proposes a comprehensive program or provides quality courses or specialized services to develop the skills of the gifted and talented children being served, or, in the case of a professional development project, the skills of the participating professional personnel.

(g) *Selection of participants.* (15 points)

The Secretary looks for information that shows the quality of the proposed procedures for identifying and selecting participants.

(h) *Specially trained personnel, mentors, or advisors.* (15 points)

The Secretary looks for information that shows the extent to which the applicant will provide specially trained personnel or experienced mentors or advisors to direct or assist the participants.

(i) *Replication.* (5 points)

The Secretary looks for information that shows the extent to which the proposed project can be adapted for use by other agencies.

(j) *Dissemination.* (5 points)

The Secretary looks for information that shows the extent to which the applicant demonstrates a capacity to disseminate information about the project or specialized materials developed through the project.

(k) *Needs assessment.* (5 points)

The extent to which the applicant identifies the special educational needs of the gifted and talented children to be served directly or indirectly by the project.

(20 U.S.C. 3315(a) (1), (2), (3), (4), and (6))

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the Grantee?

§ 347.50 Are there restrictions on the types of costs a grantee may support?

Funds may not be used for either—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Stipends, transportation, or meals for participants in inservice training activities.

(20 U.S.C. 1221e-3(a)(1))

§ 347.51 Allowable costs.

The following costs may be paid from a grant:

(a) If a project involves an internship, the payment to each participant of an allowance that is not in excess of the entering salary for professionals in the agency or institution in which the participant is placed.

(b) If the project involves a graduate fellowship, the payment of a stipend, tuition, and fees.

(c) (1) If the project involves inservice or national leadership training, the payment of tuition and fees for appropriate university or college courses.

(2) If the project involves inservice training, the payment of reasonable costs for substitutes and for release time.

(20 U.S.C. 3315 (a)(1), (a)(2), and (a)(3))

§ 347.52 May an applicant apply for a multiyear grant?

(a) An applicant may apply for funding for a multiyear project. However, each budget period is 12 months only. In its initial application, an applicant shall provide budget projections for each year after the first year.

(20 U.S.C. 3315)

(b) No financial assistance for a project may be provided to an LEA for a period in excess of 5 years.

(20 U.S.C. 3317(c))

(c) The applicant shall file an application for a continuation award for each year beyond the first year.

(d) EDGAR, §§ 75.250 through 75.253 governs multi-year projects and continuation awards.

(20 U.S.C. 3315)

§ 347.53 Must an LEA give the public an opportunity to comment on its application?

An applicant that is an LEA shall certify that it held an open meeting in order to receive public comment on its application in accordance with § 75.138-141 of EDGAR.

(20 U.S.C. 3386)

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 The State vocational rehabilitation services program.

Subpart B—State Plans for Vocational Rehabilitation Services

STATE PLAN CONTENT: ADMINISTRATION

361.2 The State plan: General requirements.
361.3 State plan approval.
361.4 Withholding of funds.
361.5 State agency for administration.
361.6 Organization of the State agency.
361.7 Designation of substitute State vocational rehabilitation agency.
361.8 State unit director.
361.9 Local administration.
361.10 Methods of administration.
361.11 Shared funding and administration of special joint projects or programs.
361.12 Waiver of Statewideness.
361.13 Cooperative programs involving funds from other public agencies.
361.14 Staffing of the State's vocational rehabilitation program.
361.15 Affirmative action plan for handicapped individuals.
361.16 Staff development.
361.17 State studies and evaluations.
361.18 Policy development consultation.
361.19 Cooperation with other public agencies.
361.20 Establishment and maintenance of information and referral resources.
361.21 State plan for rehabilitation facilities.
361.22 Utilization of rehabilitation facilities.
361.23 Reports.
361.24 General administrative and fiscal requirements.

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

361.30 Processing referrals and applications.
361.31 Eligibility for vocational rehabilitation services.

Sec.
361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.
361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.
361.34 Extended evaluation to determine vocational rehabilitation potential.
361.35 Certification: Eligibility, extended evaluation to determine vocational rehabilitation potential; ineligibility.
361.36 Order of selection for services.
361.37 Services to civil employees of the United States.
361.38 Services to handicapped American Indians.
361.39 The case record for the individual.
361.40 The individualized written rehabilitation program: Procedures.
361.41 The individualized written rehabilitation program: Content.
361.42 Scope of State unit program: Vocational rehabilitation services for individuals.
361.43 Individuals determined to be rehabilitated.
361.44 Authorization of services.
361.45 Standards for facilities and providers of services.
361.46 Rates of payment.
361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
361.48 Appeal procedures.
361.49 Protection, use and release of personal information.
361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.
361.51 Scope of State unit program: Establishment of rehabilitation facilities.
361.52 Scope of State unit program: Construction of rehabilitation facilities.
361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.
361.54 Scope of State unit program: Telecommunications systems.
361.55 Scope of State unit program: special materials for blind individuals and for deaf individuals.
361.56 Utilization of community resources.
361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
361.58 Periodic review of extended employment in rehabilitation facilities.

Subpart C—Financing of State Vocational Rehabilitation Programs

FEDERAL FINANCIAL PARTICIPATION

361.70 Effects of State rules.
Sec.
361.71 Vocational rehabilitation services to individuals.
361.72 Management services and supervision for small business enterprises for severely handicapped individuals.
361.73 Establishment of rehabilitation facilities.
361.74 Construction of rehabilitation facilities.
361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.
361.76 State and local funds.
361.77 Shared funding and administration of joint projects or programs.
361.78 Waiver of Statewideness.

ALLOTMENT AND PAYMENT

361.85 Allotment of Federal funds for vocational rehabilitation services.
361.86 Payments for allotments for vocational rehabilitation services.
361.87 Methods of computing and making payments.
361.88 Refunds.
361.89 Determining to which fiscal year expenditures are chargeable.
361.90 Audits.
361.91 Appeals procedures and expenditures settlement.

Subpart D—Payment of Costs of Vocational Rehabilitation Services for Disability Beneficiaries From the Social Security Trust Funds

361.110 General.
361.111 Purpose.
361.112 Applicability of other regulations.
361.113 Definitions.
361.114 State plan requirements.
361.115 Conditions and limitations.
361.116 Payments of trust funds.
361.117 Budgets.
361.118 Reports.

Subpart E—Vocational Rehabilitation Services for Supplemental Security Income Recipients

361.120 General.
361.121 Purpose.
361.122 Applicability of other regulations.
361.123 Definitions.
361.124 State plan requirements.
361.125 Conditions and limitations.
361.126 Payments of supplemental security income program funds.
361.127 Budgets.
361.128 Reports.

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

361.150 Purpose.
361.151 Special project requirements.

Sec.
361.152 Allotment of Federal funds.
361.153 Payments from allotments.
361.154 Methods of computing and making payments.
361.155 Reports.

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

361.170 General provisions.
361.171 How to request a hearing.
361.172 Hearing issues.
361.173 What the purpose of a hearing is.
361.174 Who presides.
361.175 How to be a party or an amicus curiae to a hearing.
361.176 What happens to a petition.
361.177 Rights of parties and amicus curiae.
361.178 Authority of presiding officer.
361.179 Discovery.
361.180 How evidence is handled.
361.181 What happens to unsponsored written material.
361.182 What the record is.
361.183 Posthearing briefs.
361.184 Decisions.
361.185 When a decision is effective.
361.186 How the State may appeal.

AUTHORITY: Sec. 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Subpart A—General

§ 361.1 The State vocational rehabilitation services program.

(a) *General.* Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation services authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.

(b) *Regulations which apply to the State vocational rehabilitation service program.* The following regulations apply to the State plan for vocational rehabilitation services program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 361.

(c) *Definitions which apply to the state vocational rehabilitation service program.*

(1) The following terms used in this Part 361 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Private"
"Public"
"Secretary"
"State"
"Work of Art"

(2) The following definitions also apply to this Part 361:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"American Indian" means a person who is a member of an Indian tribe.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Secretary" means the Secretary of the Rehabilitation Services Administration.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Designated State unit" or "State unit" means either:

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(d))

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Employability" refers to a determination that the provision of vocational rehabilitation services is likely to enable an individual to enter or retain employment consistent with his capacities and abilities in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebound employment; or other gainful work.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Establishment of a rehabilitation facility" means;

(i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;

(ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or

(iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Section 7(4) of the Act; 29 U.S.C. 706(4))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

(i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

(ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

(iii) Any other goods or services necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

(iv) Referral to other agencies or organizations, when appropriate; and

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is a handicapped individual for whom a vocational goal is feasible.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

"Family member" or "member of the family" means any relative by blood or marriage of a handicapped individual and other individual living in the same household with whom the handicapped individual has a close interpersonal relationship.

(Section 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"Handicapped individual" except in § 361.15(b), §361.51(e), and § 361.52(g) means an individual:

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Handicapped individual," for purposes of § 361.15(b), § 361.51(e), and § 361.52(g), means an individual:

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Section 7(7)(B) of the Act; 29 U.S.C. 706(7)(B))

"Local agency," unless the context clearly indicates differently, means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Section 7(8) of the Act; 29 U.S.C. 706(8))

"Physical and mental restoration services" means:

(i) Medical or corrective surgical treatment;

(ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Convalescent or nursing home care;

(vii) Drugs and supplies;

(viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(ix) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(x) Podiatry;

(xi) Physical therapy;

(xii) Occupational therapy;

(xiii) Speech or hearing therapy;

(xiv) Psychological services;

(xv) Therapeutic recreation services;

(xvi) Medical or medically related social work services;

(xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Prevocational conditioning or recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech and hearing therapy;

(vi) Psychological and social services;

(vii) Evaluation of rehabilitation potential;

(viii) Personal and work adjustment;

(ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services and other adjustment services to blind individuals; and

(xii) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act, 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.2(d) of this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Sections 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Vocational rehabilitation services" when provided to an individual, means those services listed in § 361.42 of this part.

(Section 103(a) of the Act, 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(i) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment of a rehabilitation facility;

(iii) The construction of a rehabilitation facility;

(iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(v) The use of existing telecommunications systems; and

(vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b))

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilition process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

[46 FR 5524, Jan. 19, 1981]

Subpart B—State Plans for Vocational Rehabilitation Services

SOURCE: 46 FR 5526, Jan. 19, 1981, unless otherwise noted.

STATE PLAN CONTENT: ADMINISTRATION

§ 361.2 The State plan: General requirements.

(a) *Purpose.* In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in § 361.11 (Shared funding and administration of special joint projects or programs) and § 361.12 (Waiver of Statewideness).

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary. The State plan must consist of:

(1) A part providing detailed commitments specified by the Secretary which must be amended or reaffirmed every three years; and

(2) A part containing a fiscal year progammming description, based on the findings of the continuing Statewide studies (§ 361.17), the annual evaluation of the effectiveness of the State's program (§ 361.17) and other pertinent reviews and studies. This annual programming description must include:

(i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;

(ii) Estimates of the number of handicapped individuals who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who are the most severely handicapped;

(iv) A description of the order of selection (§ 361.36) of groups of handicapped individuals to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible handicapped individuals who apply); and

(v) A statement of the general outcome and service goals to be achieved for handicapped individuals in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, which are measurable in terms of service expansion or program improvement in specified program areas, and which the State unit plans to achieve during a specified period of time.

(c) *Separate part relating to rehabilitation of the blind.* If a separate State agency for the blind administers or supervises the administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

(d) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disbilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act. The Secretary may approve the consolidated rehabilitation plan to serve as the substitute for the separate plans which would otherwise be required.

(e) *Designation of a new State agency or a new State unit.* Before designating a new State agency or a new State unit, the chief administrative officer of the State agency must assure the Secretary in writing that the vocational rehabilitation program will continue to operate in conformity with the most recent approved State plan, until a new State plan is submitted. The State agency must submit a new State plan within 90 days following the designation of a new State agency or a new State unit.

(f) *Transition to new State agency or State unit.* When a new State agency or a new State unit is designated under paragraph (e) of this section, the State agency must turn over to that agency program and financial records and other pertinent information and resources necessary for the effective conduct of the vocational rehabilitation program.

(Sections 6 and 101(a) of the Act; 29 U.S.C. 705 and 721(a))

§ 361.3 State plan approval.

The State plan must be submitted for approval for each three-year period no later than July 1 of the year preceding the first fiscal year for which the State plan is submitted.

(Section 101(b) of the Act; 29 U.S.C. 721(b))

§ 361.4 Withholding of funds.

(a) *When withheld.* Payments under sections 111 or 121 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the State agency, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 101(a) of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State agency.* The State agency is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 101(d) of the Act.

(d) *Informal discussions.* Hearings described in paragraph (a) of this section are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 101(c)(1) and 101(d) of the Act; 29 U.S.C. 721(c)(1) and 721(d))

§ 361.5 State agency for administration.

(a) *Designation of sole State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency. In the case of American Samoa, the State plan must designate the Governor; in the case of the Trust Territory of the Pacific Islands, the State plan must designate the High Secretary.

(b) *Sole State agency.* The State plan must provide that the sole State agency, except for American Samoa, and the Trust Territory of the Pacific Islands, and except for a sole State agency for the blind as specified in paragraph (c) of this section, must be:

(1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. The agency must have the authority, subject to the supervision of the Office of Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or

(2) The State agency administering or supervising the administration of education or vocational education in the State; or

(3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(c) *Sole State agency for the blind.* Where the State commission for the blind or other agency which provides assistance or services to the blind is authorized under State law to provide vocational rehabilitation services to blind individuals, this agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(d) *Authority.* The State plan must set forth the legal basis for administration by sole local rehabilitation agencies, if applicable.

(e) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services are made by the State agency through its designated State unit, or by a designated vocational rehabilitation unit of a local agency under the supervision of the designated State unit. This responsibility may not be delegated to any other agency or individual.

(Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.6 Organization of the State agency.

(a) *Organization.* The State plan must describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each, and the relationships among these units within the State agency. These descriptions must be accompanied by organizational charts reflecting:

(1) The relationship of the State agency to the Governor and his or her office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government; and

(2) The internal structure of the State agency and the designated State unit, if applicable. The organizational structure must provide for all the vocational rehabilitation functions for which the State agency is responsible, and for clear lines of administrative and supervisory authority.

(d) *Designated State unit.* Where the designated State agency is of the type specified in § 361.5(b) (2) or (3), or § 361.5(c), the State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped

individuals, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the provision of vocational rehabilitation services under the State plan;

(2) Has a full time director in accordance with § 361.8; and

(3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.

(c) *Location of designated State unit.* (1) The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in § 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.

(2) In the case of a State which has not designated a separate State agency for the blind as provided for in § 361.5 the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to blind individuals to one organizational unit of the State agency and may assign responsibility for the rest of the plan to another organizational unit of the agency, with the provisions of paragraphs (b) and (c)(1) of this section applying separately to each of these units.

(Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.7 Designation of substitute State vocational rehabilitation agency.

(a) *General Provisions.* (1) If the Secretary has withheld all funding from a State under § 361.4, designate another agency to substitute for the State agency in carrying out the State's program of vocational rehabilitation services. Funds are considered to be withheld when a final administrative decision under § 361.4 is in effect and funds either are not granted to a State agency or are granted to the State agency to enable it to operate the program on a temporary basis pending the orderly transition of responsibility to a substitute agency.

(2) Any public agency or nonprofit organization or agency within the State or any political subdivision of the State may apply for designation as a substitute agency.

(3) To be eligible for designation as a substitute agency, the applicant must submit a proposal for a substitute State plan which meets the requirements of this part.

(4) The substitute State plan covers a three-year period or the remaining portion of the period covered by the previously approved State plan. The Secretary may not make a grant to a substitute agency until he approve its plan.

(b) *Proposal submittal.* A proposal for submitting a substitute State plan must be in the format required by the Secretary.

(c) *Factors considered in evaluating proposals.* In selecting a substitute agency, the Secretary considers the following factors:

(1) The program and financial capacity of the applicant agency for carrying out a program of vocational rehabilitation services, including the source of funds to be contributed in order to match Federal funds;

(2) The organizational structure of the applicant agency;

(3) The qualifications to be required of the applicant agency staff; and

(4) The extent to which the proposed State vocational rehabilitation service program is comparable to the program which had been carried out under the most recent previously approved State plan in the State.

(d) *Review of proposals.* In selecting a substitute agency, the Secretary evaluates the relative merit of all proposals which are submitted.

(e) *Substitute agency matching share.* The Secretary shall not make any payment to the substitute agency unless it has provided assurances that it will contribute the same proportion of the total amount of funds as the State would have been obligated to contribute if the State agency were carrying out the vocational rehabilitation service program.

(f) *State agency re-designation.* If the State agency changes its State plan or agrees to change its administration of the plan to comply with Federal requirements, the State agency is redesignated as the agency to operate the vocational rehabilitation program. The State agency resumes its operation of the program either at the end of the three-year period for which the substitute State plan has been approved or on any earlier date determined by the Secretary after agreement by the substitute agency and the State agency.

(Section 101(c)(2) of the Act; 29 U.S.C. 721(c)(2))

§ 361.8 State unit director.

The State plan must assure that there will be a full-time director who directs the State agency specified in § 361.5(b)(1) or the designated State unit specified in § 361.6(b).

(Sec. 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

§ 361.9 Local administration.

(a) *Scope of written agreement.* The State plan must assure that any local administration of the plan by a sole local agency is based on a written agreement between the local agency and the designated State unit with the concurrence of the State agency which:

(1) Indicates that the local agency will conduct a vocational rehabilitation program through its designated unit under the supervision of the designated State unit in accordance with the State plan and in compliance with Statewide standards established by the designated State unit;

(2) Assures that the designated unit of the local agency will be responsible for carrying out the vocational rehabilitation program and will meet the requirements for this unit specified in § 361.6(b);

(3) Describes the methods to be followed by the designated State unit in its supervision of the local agency's vocational rehabilitation program;

(4) Indicates the basis on which the designated State unit participates financially in its locally administered vocational rehabilitation programs;

(5) Indicates whether the local unit will utilize another local public or nonprofit agency in providing vocational rehabilitation services to handicapped individuals, and the arrangements to be made; and

(6) Assures that the sole local agency will be responsible through its designated unit for the administration of the vocational rehabilitation program and will employ staff for carrying out the vocational rehabilitation program including a full-time director.

(b) *Responsibility of local agency.* If the State plan provides for local administration, it must assure that the sole local agency is responsible through its designated unit for the administration of the program within the political subdivision which it serves. A separate local agency serving the blind may administer that part of the plan relating to vocational rehabilitation of the blind, under the supervision of the designated State unit for the blind.

(Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(A)(1)(A))

§ 361.10 Methods of administration.

The State plan must assure that the State agency and the designated State unit employ those methods found necessary by the Secretary for the proper and efficient administration of the plan, and for carrying out all functions for which the State is responsible under the plan and this part.

(Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.11 Shared funding and administration of special joint projects or programs.

(a) *Procedural requirements.* In order to carry out a special joint project or program to provide services to handicapped individuals, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he has determined will more effectively accomplish the purpose of the Act and may also waive the provisions of § 361.2(a) that the State plan must be in effect in all political subdivisions of the State.

(b) *Scope of written agreement.* The State plan must assure that each special joint project or program is based on a written agreement which:

(1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each;

(2) Specifies the period of the joint project or program, and plans for anticipated continuation;

(3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;

(4) Provides written assurance that funds will be legally available for purposes of the joint project or program;

(5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;

(6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and

(7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.12 Waiver of Statewideness.

(a) *Purpose of waiver.* If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of handicapped individuals with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.

(b) *Procedural requirements.* The State plan must assure in these cases that the State unit:

(1) Obtains a written description of any activity to be carried out in a particular political subdivision;

(2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;

(3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision;

(4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accordance with § 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under § 361.12.

(5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivisions of the State, and except that the provisions of § 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and

(6) Furnishes other information and reports required by the Secretary.

(Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.13 Cooperative programs involving funds from other public agencies.

(a) *Scope of written agreement.* The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:

(1) Describes program goals and the activities to be undertaken to achieve these goals;

(2) Assures only individuals eligible for vocational rehabilitation services will be served;

(3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.

(4) Provides for an annual budget;

(5) Provides that expenditures for vocational rehabilitation services and the administration of these services will be under the direct control and at the discretion of the designated State unit.

(6) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;

(b) *Annual review.* The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.14 Staffing of the State's vocational rehabilitation program.

(a) *General staffing requirement.* The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communication such as manual communication, tactile, oral, and non-verbal communication devices.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.15 Affirmative action plan for handicapped individuals.

(a) [Reserved]

(b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Sections 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

§ 361.16 Staff development.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff development program must include, as a minimum:

(a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;

(b) An orientation program for new staff; and

(c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of handicapped individuals within the State, including the State's need for rehabilitation facilities, and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must:

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of handicapped individuals, with special reference to the need for expanding services to individuals with the most severe handicaps;

(2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;

(3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;

(4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and

(5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State.

(c) *Annual evaluation.* The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Sections 101(a)(15) and (a)(19) of the Act; 29 U.S.C. 721(a)(15) and (a)(19))

§ 361.18 Policy development consultation.

(a) *General provisions.* The State plan must assure that the designated State unit, or as appropriate, the State unit and any vocational rehabilitation unit of a local agency, seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of individuals and groups. Matters of general policy development and implementation include, but need not be limited to, program planning, development and evaluation; development of legislative and budgetary proposals; assessing research and service proposals; and affirmative action for employment of qualified handicapped individuals. The individuals and groups whose opinions are sought and considered are:

(1) Current or former recipients of vocational rehabilitation services, or as appropriate, their parents, guardians, or other representatives;

(2) Providers of vocational rehabilitation services; and

(3) Others active in vocational rehabilitation.

(b) *Public access.* The State plan must further assure that the State unit establishes and maintains a written description of the methods used to obtain and consider views on policy development and implementation. This description must be available to the public for review and inspection, as well as a report of activities which were actually undertaken in this regard during the previous fiscal year.

(Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.19 Cooperation with other public agencies.

(a) *General provisions.* The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies administering the State's social services and financial assistance programs; other programs for handicapped individuals such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

(b) *Coordination with education programs.* The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.

(c) *Coordination with veterans' programs.* The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.

(d) *Reciprocal referral services with separate agency for the blind.* Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the handicapped individuals in the State, and otherwise cooperate to provide more effective services.

(Section 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General Provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that handicapped individuals within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs which assist handicapped individuals. The State plan must also assure that the State unit will refer handicapped individuals to other appropriate Federal and State programs which might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

(b) *Special information and referral resources.* The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.21 State plan for rehabilitation facilities.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.22 Utilization of rehabilitation facilities.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to handicapped individuals in accordance with the State plan for rehabilitation facilities under § 361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Sections 101(a)(12) and (a)(15) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

§ 361.23 Reports.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

§ 361.24 General administrative and fiscal requirements.

(a) *General provisions.* The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.

(b) *Awards made by State agency.* The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.

(c) *Applicability of 34 CFR Part 74.* The provisions of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart G of 34 CFR Part 74.

(d) *Applicability of Department of Health and Human Services regulations.* Several Department of Health and Human Services regulations apply under this part. These include:

45 CFR Part 19—Limitations on Payment or Reimbursement for Drugs
45 CFR Part 46—Protection of human subjects
45 CFR Part 75—Informal grant appeals procedures (Indirect cost rates and other cost allocations)

(Sections 11 and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

§ 361.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Sections 101(a)(60 of the Act; 29 U.S.C. 721(a)(6))

§ 361.31 Eligibility for vocational rehabilitation services.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any handicapped individual who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) *Interim determination of eligibility.* The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Sections 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

(a) *Basic conditions.* The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) *Scope of diagnostic study.* The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

(c) *Specific evaluations.* The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.

(Sections 7(5) and 103(a)(1) of the Act; 29 U.S.C. 706(5) and 723(a)(1))

§ 361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.

(a) *General provision.* The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, and other factors relating to the individual's handicap to employment and rehabilitation needs.

(b) *Scope of thorough diagnostic study.* The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.34 Extended evaluation to determine vocational rehabilitation potential.

(a) *Basic conditions.* The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) *Duration and scope of services.* Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to a handicapped individual for a total period not longer than 18 months.

(c) *Other conditions.* (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in § 361.35(b). Only one 18-month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the handicapped individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(2) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, are provided only if the certification of eligibility required in § 361.35(a) has been executed by an appropriate State unit staff member.

(d) *Review.* The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may be determined to be eligible or ineligible.

(e) *Termination.* The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:

(1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services. In this case, the procedures described in § 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 363 of this chapter.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time that the State unit accepts a handicapped individual for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in § 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.

(b) *Certification for extended evaluation to determine vocational rehabilitation potential.* The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in § 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.

(c) *Certification of ineligibility.* (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, there must be a certification dated and signed by an appropriate designated State unit staff member.

(2) The State plan must further assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the procedures for administrative review and fair hearings under § 361.48. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.

(d) *Review of ineligibility determination.* The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligiblity determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal.

(e) *Closure without eligibility determination.* The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage his or her participation.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must show the order to be followed in selecting groups of handicapped individuals to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals.

(b) *Priority for severely handicapped individuals.* The State plan must assure that those groups of individuals with the most severe handicaps are selected for service before any other groups of handicapped individuals.

(c) *Disabled public safety officers.* The State plan must also assure that special consideration will be given to those handicapped individuals whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Section 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

§ 361.37 Services to civil employees of the United States.

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other handicapped individuals.

(Section 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to handicapped American Indians residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services to handicapped American Indians on reservations served by a special tribal program under Section 130 of the Act, if the population estimates used for determining the State's allotment include the population of Indians residing on these reservations.

(Section 101(a)(20) of the Act; 29 U.S.C. 721(a)(20))

§ 361.39 The case record for the individual.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

(a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

(b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;

(c) Documentation supporting any determination that the handicapped individual is a severly handicapped individual;

(d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

(e) An individualized written rehabilitation program as developed under § 361.40 and § 361.41 and any amendments to the program;

(f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the handicapped individual is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

(g) Documentation supporting any decision to provide services to family members;

(h) Documentation relating to the participation by the handicapped individual in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

(i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

(j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other material concerning any information released about the handicapped individual with his or her written consent;

(k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

(l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;

(m) Documentation concerning any action and decision involving the handicapped individual's request for an administrative review of agency action or fair hearing under § 361.48; and

(n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with § 361.40(d).

(Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.40 The individualized written rehabilitation program: Procedures.

(a) *General Provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the handicapped individual or, as appropriate, his or her parent, guardian or other representative. The State unit must provide a copy of the written program, and any amendments, to the handicapped individual or, as appropriate, his or her parent, guardian, or other representative and must advise each handicapped individual, or his or her representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 361.35(a)or certification for extended evaluation to determine rehabilitation potential under § 361.35(b).

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each handicapped individual, or, as appropriate, his or her parent, guardian on other representative must be given an opportunity to review the program and, if necessary, jointy redevelop and agree to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program because of a determination that the handicapped individual is not capable of achieving a vocational goal and is therefore no longer eligibile, or if in the case of a handicapped individual who has been provided services under an extended evaluation of vocational rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible, the following conditions and procedures will be met or carried out.

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under § 361.35(c) is then executed; and

(3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.

(Section 101(a)(9) of the Act; 29 U.S.C. 721(a)(9))

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that the individualized written rehabilitation program places primary emphasis on the determination and achievement of a vocational goal, and as appropriate includes, but is not necessarily limited to, statements concerning:

(1) The basis on which the determination of eligibility has been made, or

the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual;

(3) The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives;

(4) The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(6) The views of the handicapped individual, or, as appropriate, his or her parent, guardian, or other representative, concerning his or her goals and objectives and the vocational rehabilitation services being provided;

(7) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the handicapped individual in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs; and the extent to which these similar benefits have been used;

(8) An assurance that the handicapped individual has been informed of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of State unit action, fair hearing or review by the Secretary under § 361.48;

(9) Where appropriate, assurance that the handicapped individual has been provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act;

(10) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(11) Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.

(b) *Coordination with education agencies.* When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.

(Sections 101 (a)(9) and (a)(11) of the Act; 29 U.S.C. 721 (a)(9) and (a)(11))

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) *Scope of services.* The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have

been made by the State unit to secure grant assistance in whole or in part from other sources;

(5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when postemployment services are being provided. Maintenance covers a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

(6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting handicapped individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services and notetaking services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.

(c) *Special requirements.* In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under § 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.

(Sections 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

§ 361.43 Individuals determined to be rehabilitated.

(a) *Minimum requirements.* The State plan must assure that an individual determined to be rehabilitated, must have been, as a minimum:

(1) Determined to be eligible under § 361.35(a);

(2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

(3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under § 361.40 and § 361.41; and

(4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services when necessary to assist an individual to maintain suitable employment

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.44 Authorization of services.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Standards for facilities and providers of services.

(a) *General provisions.* The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.

(b) *Rehabilitation facility standards.* The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968 and, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as amended, and its implementing standards 41 CFR Part 101-19.6 et seq.

(c) *Rehabilitation facility personnel and providers of services.* The Secretary exercises no authority concerning the selection, method of selection, tenure of office, or compensation of any individual employed in any facility or personnel utilized in providing service.

(Sections 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

§ 361.46 Rates of payment.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.47 Participation by handicapped individuals in the cost of vocational rehabilitation services.

(a) *Financial need.* (1) There is no Federal requirement that the financial need of a handicapped individual be considered in the provision of any vocational rehabilitation services.

(2) If the State unit chooses to consider the financial need of handicapped individuals for purposes of determining the extent of their participation in the costs of vocational reha-

bilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all handicapped individuals in similar circumstances.

(3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:

(i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under § 361.34;

(ii) Counseling, guidance, and referral services; and

(iii) Placement.

(b) *Consideration of similar benefits.* (1) The State plan must assure that, in all cases, the State unit gives full consideration to any similar benefits available to a handicapped individual, or to members of a handicapped individual's family, under any program to meet, in whole or in part, the cost of any vocational rehabilitation services except the following:

(i) Evaluation of vocational rehabilitation potential except as provided under paragraph (b)(4) of this section;

(ii) Counseling, guidance and referral;

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, which are not provided in institutions of higher education (§ 361.42(a)(4));

(iv) Placement; and

(v) Post-employment services consisting of the services listed under paragraphs (b)(1) (i)-(iv) of this section.

(2) The State plan must assure that the designated State unit gives full consideration to any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance unless it would significantly delay the provision of services to an individual;

(3) The State plan must also assure that when an individual is eligible for similar benefits, these benefits must be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(4) The State plan must also assure that the State unit gives full consideration to any similar benefits available to a handicapped individual being provided an extended evaluation of vocational rehabilitation potential in a manner consistent with paragraphs (b)(1) through (b)(3) of this section.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

§ 361.48 Appeal procedures.

(a) *Administrative review and fair hearing.* The State plan must assure that when an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, he or she may file a request for an administrative review and a redetermination of that action by the supervisory staff of the designated State unit. The State plan must also provide that an individual, who is dissatisfied with the finding of this administrative review, is given an opportunity for a fair hearing before the State unit director or his designee.

(b) *Additional requirements and procedures in connection with an individualized written rehabilitation program.* (1) When an administrative review and fair hearing have been completed with regard to any decision or determination made in connection with an individualized written rehabilitation program, the final decision made on the basis of the fair hearing must be made in writing by the State unit director. The procedures established by the State unit in this regard must provide that the responsibility for making the final decision may not be delegated to any other officer or employee of the State unit.

(2) When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing under paragraph (a) of this section, the indi-

vidual may request the Secretary to review the decision. When this request is made, the Secretary or the Secretary's designee reviews the State unit director's decision and makes recommendations to the director concerning action to be taken to resolve the issue and dispose of the matter. Within 60 days of receiving these recommendations, the director advises the handicapped individual and the Secretary of the final disposition of the matter.

(c) *Informing affected individuals.* Each applicant or individual being provided vocational rehabilitation services must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(Sections 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

§ 361.49 Protection, use and release of personal information.

(a) *General provisions.* The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) *Release to involved individuals.* (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

(f) *Release to the Secretary or the Secretary's designee.* Where the individual or his or her representative has requested the Secretary to review the final decision of the State Unit Director under § 361.48, the State unit, upon request of the Secretary or the Secretary's designee, will provide to the Secretary or the Secretary's designee a complete and officially certified copy of the case record of the individual, including the record and transcripts of the Fair Hearing decision made by the State Unit Director.

§ 361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.

(a) *General provisions.* The State plan may provide for establishing small business enterprises operated by severely handicapped individuals and may also provide for management services and supervision for these enterprises. "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by severely handicapped individuals. "Managment services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.

(b) *Special policies.* If the State plan provides for management services and supervision, it must assure that the State unit maintains:

(1) A description of the types of small business enterprises to be established;

(2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;

(3) A description of the policies governing the management and supervision of the program;

(4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and

(5) An assurance that only severely handicapped individuals will be selected to participate in this supervised program.

(c) *Set-aside funds.* If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purpose for which funds are set aside. Funds may be used only for small business enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.51 Scope of State unit program: Establishment of rehabilitation facilities.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and

(e) Any rehabilitation facility established under this part will develop and implement a plan to take afffirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.52 Scope of State unit program: Construction of rehabilitation facilities.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;

(e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;

(f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set forth in the application; and

(g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one handicapped individual. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.54 Scope of State unit program: Telecommunications systems.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of handicapped individuals, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual readout. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of handicapped individuals from ethnic groups which represent substantial segments of the population of the State.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721 (a)(6) and 723(b))

§ 361.56 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for handicapped individuals under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Section 101(a)(21) of the Act, 29 U.S.C. 721(a)(21))

§ 361.58 Periodic review of extended employment in rehabilitation facilities.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those handicapped individuals who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

Subpart C—Financing of State Vocational Rehabilitation Programs

SOURCE: 46 FR 5539, Jan. 19, 1981, unless otherwise noted.

FEDERAL FINANCIAL PARTICIPATION

§ 361.70 Effect of State rules.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Section 111(a) of the Act; 29 U.S.C. 731(a))

§ 361.71 Vocational rehabilitation services to individuals.

(a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specifed vocational rehabilitation services to handicapped individuals as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of a handicapped individual or to be of benefit in terms of his or her employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)

(b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the costs of native healing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve a handicapped individual's vocational rehabilitation objective.

(c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under § 361.72) for any one handicapped individual or for a group of handicapped individuals under § 361.75.

(Sections 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

§ 361.72 Management services and supervision for small business enterprises for serverely handicapped individuals.

(a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for severely handicapped individuals, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.

(b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set-aside by the State unit from the proceeds of the operation of small business enterprises for the most severely handicapped individuals under its management and supervision.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.73 Establishment of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:

(1) Acquisition of existing buildings, and where necessary, the land in connection therewith;

(2) Remodeling and alteration of existing buildings;

(3) Expansion of existing buildings;

(4) Architect's fees;

(5) Site survey and soil investigation;

(6) Initial and additional fixed or movable equipment of existing building;

(7) Initial and additional staffing of rehabilitation facilities; and

(8) Such other direct expenditures as are appropriate to the establishment project.

(b) Federal financial participation is not available in any expenditure:

(1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than $300,000.

(2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;

(3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the building prior to its remodeling or alteration;

(4) For the expansion of an existing building which has not been completed in all respects;

(5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of usable space, will be greater than twice the size of the original existing building; or

(6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

(c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be 80 per cent.

(d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sec. 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

§ 361.74 Construction of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:

(1) Acquisition of land in connection with the construction of a rehabilitation facility;

(2) Acquisition of existing buildings;

(3) Remodeling, alteration or renovation of existing buildings;

(4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;

(5) Architect's fees;

(6) Site survey and soil investigation;

(7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;

(8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and

(9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.

(b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

(c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sections 7(1), 12(c), and 103(b) of the Act; 29 U.S.C. 706(1), 711(c) and 723(b))

§ 361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of handicapped individuals but which are not related directly to the rehabilitation of any one handicapped individual. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.76 State and local funds.

For purpose of this part, "State or local funds" means:

(a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under § 361.13.

(b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility;

(c) Funds set aside pursuant to § 361.72(b); or

(d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.77 Shared funding and administration of joint projects or programs.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with § 361.11, Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Sections 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

§ 361.78 Waiver of Statewideness.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (§ 361.12). Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Sections 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))

ALLOTMENT AND PAYMENT

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

(a) The allotment of the Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act.

(b) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(c) The total Federal financial participation in the expenditures for construction for a fiscal year may not exceed 10 percent of the State's allotment for that year. The amount of the State's share of expenditures for vocational rehabilitation services other than for the establishment of rehabilitation facilities or the construction of rehabilitation facilities must be at least equal to the average of its expenditures for those other vocational rehabilitation services for the preceding 3 fiscal years.

(d) When a special project has been awarded for the provision of vocational rehabilitation services to handicapped American Indians residing on a reservation under Section 130 of the Act, and the State unit does not intend to continue to provide vocational rehabilitation services to these American Indians, the allotment for the State in which the reservation is located is computed by subtracting from the population under paragraph (a) of this section:

(1) 33 percent of the total number of American Indians residing on the reservation to be served in the first full fiscal year during which the special project is in operation;

(2) 66 percent of such American Indians in the second full fiscal year during which the special project is in operation; and

(3) 100 percent of such American Indians in the third full fiscal year during which the special project is in operation.

(Sections 12(c), 110, and 130(c) of the Act; 29 U.S.C. 711(c), 730 and 750(d))

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(c), the Secretary pays to each State an amount computed in accordance with the requirements of Section 111 of the Act. The Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities).

(b) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part) for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the fiscal year ending June 30, 1972. If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan during the fiscal year ending June 30, 1972.

(Sections 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.87 Method of computing and making payments.

(a) *Estimates.* Before the beginning of each fiscal quarter or other prescribed period, the Secretary estimates the amount to be paid to each State from its allotment for vocational rehabilitation services under section 110 of the Act, and its allotment for innovation and expansion projects under section 120 of the Act. This estimate is based on records of the State and information furnished by it, and any other investigation found necessary by the Secretary.

(b) *Payments.* The Secretary pays, from the allotment available, the amount estimated for the determined period. In making any payment, additions and subtractions are made as necessary in balancing the Federal-State account for any prior period on the basis of the State's accounting. Payments are made prior to audit or settlement through a Letter of Credit system.

(Section 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.88 Refunds.

Any amount refunded or repaid by the State is credited to the Federal account in proportion to the Federal participation in the expenditures by reason of which the refunds or repayments were made. These sums are considered as granted from the State's allotment.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.89 Determining to which fiscal year expenditures are chargeable.

In determining to which Federal fiscal year expenditures are chargeable, States are governed by the following:

(a) Expenditures are chargeable to a particular fiscal year in accordance with State laws or regulations. In the absence of applicable provisions of State laws or regulations, the actual date of the expenditure is controlling;

(b) In the event that a State's fiscal year does not coincide with the Federal fiscal year, appropriate State laws or regulations governing the recording of expenditures govern;

(c) In those States which appropriate funds for a biennium, the principles provided in State laws, regulations and practices for determining to which year of the biennium an expenditure is charged apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.90 Audits.

(a) Whenever considered necessary and appropriate, the operations of the State program are audited. These audits are made to determine whether the State program is being operated in a manner that:

(1) Encourages prudent use of program funds; and

(2) Provides a reasonable degree of assurance that funds are being properly expended for the purpose for which appropriated and provided under the Act and the State plan.

(b) Final determination as to action to be taken as a result of an audit is made by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.91 Appeals procedures and expenditures settlement.

The State agency has the right to appeal proposed audit exceptions in which it has not concurred. When expenditures have not been accepted by the Secretary and the State has not made proper restitution, the claim is deducted from subsequent grants made to the State agency.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—Payment of Costs of Vocational Rehabilitation Services for Disability Beneficiaries From the Social Security Trust Funds

AUTHORITY: Sec. 400(b), 87 Stat. 386 (29 U.S.C. 780(b)); and sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

SOURCE: 40 FR 54699, Nov. 25, 1975. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

§ 361.110 General.

(a) Section 222 of the Social Security Act provides for the payment form the trust funds of costs of vocational rehabilitation services furnished to disability beneficiaries. Within the limits authorized under section 222, trust funds will be available for payment by the Secretary to the States to provide for vocational rehabilitation services (and related costs of administration) for disability beneficiaries under State plans approved under the Act.

(b) To receive trust funds for vocational rehabilitation, each State agency is required to submit an amendment to its State plan which sets forth its policy and procedures for providing vocational rehabilitation services to disability beneficiaries in keeping with the purpose as stated below and which meets the requirements and conditions prescribed herein.

§ 361.111 Purpose.

With the purpose of making it possible for more disability beneficiaries to receive vocational rehabilitation services, money is made available from the trust funds to finance the vocational rehabilitation of selected beneficiaries. This money will be used in such a way that the saving from the amount of benefits that would otherwise have to be paid and the increased contributions to the trust funds paid by virtue of the earnings of beneficiaries who return to work will exceed, or at least equal, the money paid from the trust funds for rehabilitation costs.

§ 361.112 Applicability of other regulations.

The provisions governing vocational rehabilitation services to disability beneficiaries, the costs of which are paid from trust funds, must conform to all requirements elsewhere in this part governing the State vocational rehabilitation programs which are not inconsistent with the requirements prescribed in this subpart.

§ 361.113 Definitions.

(a) "Disability beneficiary" means a disabled individual who is entitled to benefits under section 223 of the Social Security Act (including disabled individuals serving a waiting period prior to such entitlement), a disabled individual age 18 or over who is entitled to child's insurance benefits under section 202(d) of the Social Security Act, or a disabled widow, widower, or surviving divorced wife under sections 202 (e) and (f) of the Social Security Act.

(b) "Productive activity" means full-time employment, part-time employment, or self-employment wherein the nature of the work activity performed, the earnings received, or both, or the capacity to engage in such employment or self-employment, can reasonably be expected to result in the termination of entitlement to disability insurance benefits or in the nonpayment of benefits where entitlement is based on statutory blindness.

(c) "Trust Funds" means funds derived from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for purposes of vocational rehabilitation pursuant to section 222(d) of the Social Security Act.

§ 361.114 State plan requirements.

For a State to receive trust funds the State plan must contain the following provisions regarding vocational rehabilitation services to disability beneficiaries.

(a) *Conformance to selection criteria.* The State plan shall provide that, to the extent funds provided from the trust funds are adequate for that purpose, vocational rehabilitation services will be furnished to disability beneficiaries in the State who the State determines on the basis of medical, vocational, social, personal, or other factors are eligible for services and who meet the following requirements:

(1) The disabling impairment is not so rapidly progressive as to outrun the effect of vocational rehabilitation services to the extent that restoration of the beneficiary to productive activity is precluded;

(2) The disabling effect of the impairment, without the services planned, is expected to remain at a level of severity which would result in the continuing payment of disability benefits;

(3) There is a reasonable expectation that the provision of services will enable the individual to engage in productive work activity; and

(4) The reasonably predictable period of productive work activity is of sufficient duration that the benefits to be saved and the contributions which would be paid to the trust funds on future earnings would offset the cost of the services planned.

(b) *Order of selection.* To the extent that funds provided for this purpose are adequate, the State plan shall provide that the order of selection for services shall be in accordance with the beneficiary's readiness and potential for rehabilitation to productive activity and without regard to any other order of selection set forth in the State plan.

(c) *Citizenship, residence, and economic need.* The State plan shall provide that any disability beneficiary who meets the other requirements for selection for vocational rehabilitation services shall be provided with authorized services without regard to

(1) Citizenship, or

(2) Place of residence, or

(3) Need for financial assistance.

(d) *Promptness of services.* The State plan shall provide that services will be furnished with reasonable promptness to disability beneficiaries selected under paragraphs (a), (b), and (c) of this section.

(e) *Services available.* The State plan shall provide that vocational rehabilitation services available to disability beneficiaries selected for such services shall include the full range of services authorized in the Act, to the extent that such services are consistent with this subpart, subject to the conditions and limitations with respect to the use of trust funds prescribed in § 361.115.

(f) *Staff, supervision and training.* The State plan shall provide for staff, supervision, and training of personnel to carry out the functions of this subpart in an effective manner.

§ 361.115 Conditions and limitations.

Costs of vocational rehabilitation services (and administration) paid from trust funds shall be subject to the following conditions and limitations:

(a) Trust funds will not be used to pay costs of establishment or construction of a rehabilitation facility.

(b) Trust funds will not be used to pay the costs of maintenance while an individual is receiving vocational rehabilitation services unless it is necessary for the individual to be away from home to receive such services. The costs of such maintenance shall not exceed the amount of increased expenses that are necessitated by the rehabilitation program.

(c) Where trust funds are used to pay the cost of equipment, initial stock and supplies, including that for a vending stand or other small business enterprise, for the rehabilitation, of a beneficiary, the State agency shall establish appropriate controls to assure that such equipment and stock no longer required by that beneficiary are utilized by another beneficiary. When it is unlikely that such equipment and stock will be needed by another beneficiary within a reasonable period of time, it may be disposed of according to usual State agency procedures with appropriate credit to the trust funds.

§ 361.116 Payments of trust funds.

(a) *Payment and distribution of funds.* (1) Payment from available trust funds may be made in advance or by way of reimbursement for agency costs of providing services (including administration) under an approved amended State plan.

(2) In distributing funds to the States, the Secretary will consider agency estimates, the number of disability beneficiaries in the State, and such other factors as the Secretary may determine.

(3) The Secretary will make necessary adjustments or redistribution on account of overpayments, underpayments, and unused funds.

(b) *Payments for services and administration.* (1) Payment from trust funds may be made for the cost of determining the eligibility for and the character of vocational rehabilitation services needed by a disability beneficiary, or a claimant for disability benefits, if it appears there is a strong likelihood that such claimant will be found entitled to such disability benefits (even though later it is not so found), to the extent that such costs were incurred with respect to such claimant prior to the receipt by the State agency of notice of a determination of nonentitlement.

(2) Other authorized services provided prior to determination of entitlement to persons meeting the selection criteria may be paid for from trust funds if and when the State agency receives notice that the individual has been determined to be entitled to disability benefits.

(3) In no case, however, may services be paid for from the trust funds which are provided before

(i) The effective date of the approved amended State plan,

(ii) The beginning of the period of disability, or

(iii) The filing of application for disability benefits, whichever is latest, or in the case of a disabled child the date of entitlement to child's benefits because of disability.

(c) *Reversal of determination of nonentitlement for disability benefits.* Payment from the trust funds for services which have been rendered to a claimant otherwise eligible therefor who has been found not entitled to disability benefits may, if such finding is later reversed on reconsideration, appeal, or judicial review, be made retroactively for the fiscal year in which notice of the reversal is received by the State agency, provided at that time services consistent with the purpose of this subpart are being currently rendered to the claimant.

(d) *Termination of disability benefits.* Payment for services after receipt by the State agency of notice that entitlement to disability benefits has terminated shall not be made from trust funds, except when the services have been started and the individual case plan reflects that commitments of monies were made for those services prior to receipt of notice of such termination, i.e., written contracts, purchase orders, or equivalent authorizations have been issued, or lump sum payment may have been required to have been made in advance such as in the case of tuition or training expenses. In no case may payment be made for costs of services extending more than four months after the month in which entitlement to disability benefits terminates or in which notice that entitlement to disability benefits has terminated is received by the State agency, which ever is later.

§ 361.117 Budgets.

Periodically, as may be required, the State shall prepare and submit a budget estimate of trust funds needed to pay the costs of vocational rehabilitation services for disability beneficiaries and for the administration of such services.

§ 361.118 Reports.

The State shall submit reports of expenditures and case services activities in behalf of beneficiaries, in such form and in such detail and frequency as determined necessary by the Secretary. All records, procedures, and operational activities of the State agency, the costs of which are paid from trust funds shall be subject to evaluative study, inspection, review, and audit.

Subpart E—Vocational Rehabilitation Services for Supplemental Security Income Recipients

AUTHORITY: Sec. 400(b), 87 Stat. 386 (29 U.S.C. 780(b)); and sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

SOURCE: 40 FR 54699, Nov. 25, 1975. Redesignated at 45 FR 77369, Nov. 21, 1980, unless otherwise noted.

§ 361.120 General.

(a) Section 1615 of the Social Security Act provides for the referral of blind or disabled supplemental security income recipients who are under age 65 to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 and for a periodic review of their need for and utilization of available vocational rehabilitation services. Individuals so referred must accept such vocational rehabilitation services as are made available, unless there is good cause to refuse. Authorization is provided to pay the State agency the costs incurred in the provision of such services to individuals so referred.

(b) Funds appropriated under this authority will be made available for payment by the Secretary for vocational rehabilitation services (and related costs of administration) provided under the State plan approved under the Rehabilitation Act of 1973.

(c) To receive Federal funds for services under this subpart, each State agency is required to submit an amendment to its State plan which sets forth the policies and procedures for providing services to blind and disabled recipients in keeping with the purpose as stated below and which meets the requirements and conditions prescribed herein.

§ 361.121 Purpose.

The purpose of the provision of vocational rehabilitation services as authorized in this subpart is to enable a maximum number of recipients to increase their employment capacity to the extent that they can engage in productive activity.

§ 361.122 Applicability of other regulations.

The provisions governing vocational rehabilitation services to supplemental security income recipients, the costs of which are paid from supplemental security income program funds, must conform to all requirements elsewhere in this part governing the State vocational rehabilitation programs which are not inconsistent with the requirements prescribed in this subpart.

§ 361.123 Definitions.

(a) "Supplemental security income recipient", or "recipient", as used in this subpart, means an individual who is receiving cash payments (or with respect to whom payments are made) under the supplemental security income program based on blindness or disability.

(b) "Productive activity" means full-time employment, part-time employment, or self-employment wherein the nature of the work activity performed, the earnings received, or both, or the capacity to engage in such employment or self-employment, can reasonably be expected to result in termination of eligibility for supplemental security income payments, or at least a substantial reduction of such payments in accord with income exclusions applying to the blind as specified in 20 CFR Part 416, Subpart K.

§ 361.124 State plan requirements.

For a State to receive Federal funds appropriated for this purpose, the State plan must contain the following provisions regarding vocational rehabilitation services to supplemental security income recipients.

(a) *Conformance to selection criteria.* The State plan shall provide that, to the extent funds appropriated are adequate for the purpose, vocational rehabilitation services will be furnished to recipients in the State who the State determines on the basis of medical, vocational, social, personal, or other factors are eligible for services and who meet the following requirements:

(1) The disabling impairment is not so rapidly progressive as to outrun the effect of vocational rehabilitation services to the extent that restoration of the recipient to productive activity is precluded;

(2) The disabling effect of the impairment, without the services planned, is expected to remain at a level of severity which would result in the continuing eligibility of the recipient;

(3) There is a reasonable expectation that the provision of services will enable the individual to engage in productive activity; and

(4) The reasonably predictable period of productive work activity is of sufficient duration that the expenditures made for services are expected to be offset by the non-payment or sub-

stantial reduction of supplementary security income payments which otherwise would be made to the individual.

(b) *Order of selection.* To the extent that the funds appropriated for this purpose are adequate, the State plan shall provide that the order of selection for services shall be in accordance with the recipient's readiness and potential for rehabilitation to productive activity and without regard to any other order of selection set forth in the State plan.

(c) *Economic need test.* The State plan shall provide that any recipient who meets the other requirements for vocational rehabilitation services through the use of supplemental security income program funds shall be provided authorized services without regard to any economic need test set forth in the State plan.

(d) *Promptness of services.* The State plan shall provide that services will be furnished with reasonable promptness to recipients selected under paragraphs (a), (b), and (c) of this section.

(e) *Services available.* The State plan shall provide that vocational rehabilitation services available to recipients selected for such services shall include the full range of services authorized in the Act, to the extent that such services are consistent with the purpose of this subpart, and subject to the limitations with respect to the use of supplemental security income program funds prescribed in § 361.125.

(f) *Staff, supervision and training.* The State plan shall provide for staff, supervision, and training of personnel to carry out the functions of this subpart in an effective manner.

§ 361.125 Conditions and limitations.

Costs of vocational rehabilitation services (and administration) paid from supplemental security income program funds shall be subject to the following conditions and limitations:

(a) Supplemental security income program funds will not be used to pay costs of establishment or construction of a rehabilitation facility.

(b) Supplemental security income program funds will not be used to pay the costs of maintenance while an individual is receiving vocational rehabilitation services unless it is necessary for the individual to be away from home to receive such services. The costs of such maintenance shall not exceed the amount of increased expenses that are necessitated by the rehabilitation program.

(c) Where supplemental security income program funds are used to pay the cost of equipment, initial stock and supplies, including that for a vending stand or other small business enterprise, for the rehabilitation of a recipient, the State agency shall establish appropriate controls to assure that such equipment and stock no longer required by that recipient are utilized by another recipient. When it is unlikely that such equipment and stock will be needed by another recipient within a reasonable period of time, it may be disposed of according to usual State agency procedures with appropriate credit to the supplemental security income program funds.

§ 361.126 Payments of supplemental security income program funds.

(a) *Payment and distribution of funds.* (1) Payment from available funds may be made in advance or by way of reimbursement for agency costs of providing services (including administration) under an approved amended State plan.

(2) In distributing funds to the States, the Secretary will consider agency estimates, the number of recipients in the State, and such other factors as the Secretary may determine.

(3) The Secretary will make necessary adjustments or redistribution on account of overpayments, underpayments, and unused funds.

(b) *Payments for services and administration.* (1) Payment from supplemental security income program funds may be made for the cost of determining the eligibility for and the character of vocational rehabilitation services needed by a recipient, or an applicant for supplemental security income payments, if it appears there is a strong likelihood that such applicant will be found eligible for supplemental security income (even though later it is not so found), to the extent that such costs were incurred with respect to such applicant prior to the receipt by the State agency of notice of a determination of ineligibility.

(2) Other authorized services provided prior to determination of eligibility for supplemental security income payments to persons meeting the selection criteria may be paid for from supplemental security income program funds if and when the State agency receives notice that the individual has been determined to be eligible for such payments.

(3) In no case, however, may services be paid from supplemental security income program funds which are provided before (i) the effective date of the approved amended State plan, or (ii) the beginning date of the individual's eligibility for supplemental security income payments, whichever is later.

(c) *Reversal of determination of ineligibility for supplemental security income payments.* Payment from supplemental security income program funds for services which have been rendered to an applicant otherwise eligible therefore who has been found not eligible for supplemental security income payments may, if such finding is later reversed on reconsideration, appeal, or judicial review, be made retroactively for the fiscal year in which notice of the reversal is received by the State agency, provided at that time services consistent with the purpose of this subpart are being currently rendered to the recipient.

(d) *Termination of supplemental security income payments.* Payment for services after receipt by the State agency of notice that eligibility for supplemental security income payments has terminated shall not be made from supplemental security income program funds, except when the services have been started and the individual case plan reflects that commitments of monies were made for those services prior to receipt of notice of such termination, i.e., written contracts, purchase orders, or equivalent authorizations have been issued, or lump sum payment may have been required to have been made in advance such as in the case of tuition or training expenses. In no case may payment be made for costs of services extending more than four months after the month in which eligibility for supplemental security income payments terminates or in which notice that eligibility for supplemental security income payments has terminated is received by the State agency, whichever is later.

§ 361.127 Budgets.

Periodically, as may be required, the State shall prepare and submit a budget estimate of supplemental security income program funds needed to pay the costs of vocational rehabilitation services for recipients and for the administration of such services.

§ 361.128 Reports.

The State shall submit reports of expenditures and case services activities in behalf of recipients, in such form and in such detail and frequency as determined necessary by the Secretary. All records, procedures, and operational activities of the State agency, the costs of which are paid from supplemental security income program funds, shall be subject to evaluative study, inspection, review, and audit.

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

SOURCE: 46 FR 5542, Jan. 19, 1981, unless otherwise noted.

§ 361.150 Purpose.

Under section 121(a) of the Act, grants may be made for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including:

(a) Programs to initiate or expand services to individuals who are the most severely handicapped, or

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particulary handicapped individuals who are poor and the responsibility for whose treatment, education, and rehabilitation is shared by the designated State unit with other agencies.

(Section 121(a) of the Act; 29 U.S.C. 741(a))

§ 361.151 Special project requirements.

(a) All project activities to be performed under this subpart must either be included within the scope of the approved State plan, or the State plan must be amended to include them.

(b) Grants may be made to a State agency or at the option of the State agency to a public or nonprofit organization or agency.

(c) The approval of the appropriate State agency must be secured before funds may be granted to any organization or agency other than the State agency for the provision of direct services to handicapped individuals or for establishing or maintaining facilities which provide direct services to handicapped individuals.

(d) Written program descriptions of activities to be conducted under grants under this subpart, including a budget, must be submitted in detail and according to the procedures required by the Secretary.

(e) Federal financial participation in the cost of any project uder this subpart is not available for any period longer than 36 months.

(f) The construction of a rehabilitation facility may not be undertaken unless it has been demonstrated to be essential to carrying out a project for providing services under this subpart. In addition, the need for the facility must have been demonstrated in the State's inventory of rehabilitation facilities under § 361.23.

(g) Grants may not be made solely for the purpose of planning or determining the feasibility of initiating a vocational rehabilitation service program.

(h) In order to receive assistance, a public or other nonprofit organization or agency, including a public or other nonprofit rehabilitation facility, must develop and implement an affirmative action plan for equal employment opportunity and advancement opportunity for qualified handicapped individuals. The affirmative action plan must provide for specific action steps, time tables, and complaint and enforcement procedures.

(Sections 12(c), 121(a) and 121(b) of the Act; 29 U.S.C. 711(c), 741(a) and 741(b))

§ 361.152 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under this subpart is computed in accordance with the requirements of section 120 of the Act.

(b) If at any time after the start of any fiscal year, or after a review after May 1 of that fiscal year, the Secretary determines that any amount will not be utilized by a State in carrying out the purpose of this subpart, he makes that amount available to one or more other States which he determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for the year.

(c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(d) Within each State's allotment, the Secretary may require that up to 50 percent of available funds must be expended in connection with projects which he has first approved. If the Secretary so requires, he notifies the States of any established program priorities at least 90 days prior to the beginning of each fiscal year.

(Sections 12(c), 120 and 121 of the Act; 29 U.S.C. 711(c), 740 and 741)

§ 361.153 Payments from allotments.

From the sums allotted under § 361.152, the Secretary pays to each State for any project approved under this subpart, an amount up to 90 percent of the costs of the project, (except for a project for construction of a rehabilitation facility where the amount is no more than 50 percent of the total cost of the project) consistent with annual instructions or program guidelines. The amount of Federal financial participation in the costs of construction of a rehabilitation facility is the same percentage specified in § 361.74(b).

(Sections 7(6) and 121(b) of the Act: 29 U.S.C. 706(6) and 741(b))

§ 361.154 Methods of computing and making payments.

Computing and making payments are done in accordance with § 361.87. The provisions of § 361.88 through § 361.91 also apply.

(Section 12(c) of the Act: 29 U.S.C. 711(c))

§ 361.155 Reports.

A grantee must submit reports required by the Secretary and must comply with any requirements necessary to assure the correctness and verification of these reports. These reports include an annual report of program accomplishments reflecting the extent to which programs of vocational rehabilitation services have been initiated or expanded for severely handicapped individuals or for other individuals who have unusual and difficult problems in connection with their rehabilitation.

(Section 12(c) of the Act: 29 U.S.C. 711(c))

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

SOURCE: 46 FR 5543, Jan. 19, 1981, unless otherwise noted.

§ 361.170 General provisions.

(a) *Scope.* These hearing procedures apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment; and

(2) Determination that the State agency has failed in the administration of its approved plan to comply substantially with the provisions of its plan.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Rehabilitation Services Administration and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart.

(c) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the Rehabilitation Services Administration Hearing Clerk. Individuals may direct inquiries to the Rehabilitation Services Administration Hearing Clerk, Department of Education, 330 C Street SW., Washington, D.C. 20201.

(d) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the Rehabilitation Services Administration Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be filed.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(e) *When rules are suspended.* After notifying the parties, the Secretary or the individual designated as presiding officer may modify or waive any rule in this subpart if it is decided that the action is equitable and will not unduly prejudice the rights of any party.

(Sections 12(c), 101(b) and 101(c) of the Act: 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.171 How to request a hearing.

(a) *Time limit.* A State agency has 60 days from receipt of the Secretary's written notice of proposed disapproval of a State plan or plan amendment, or intended compliance action to request a hearing. The agency shall make its request in writing to the Secretary.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Secretary makes a final determination and notifies the agency by letter of the decision to withhold either all further payments under the plan or only payments for those portions of the plan affected.

(c) *How request is acknowledged*—(1) *Notice of hearing.* Within 30 days of receiving a hearing request, the Secretary notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Secretary publishes the hearing notice in the FEDERAL REGISTER. The hearing will be held in a setting with accommodations necessary to make it free from architectural, communication and other barriers to the participation of handicapped persons.

(2) *When a hearing is held.* The date set for a hearing is 20 to 60 days from the date the State agency receives the hearing notice. However, the State agency and the presiding officer may agree in writing to a different date.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 21(b) and 721(c))

§ 361.172 Hearing issues.

(a) *What the hearing issues are.* The issues at a hearing are those included in the Secretary's notice to the State agency.

(b) *How the Secretary may add issues.* At least 20 days before a hearing, the Secretary notifies the agency by letter of any additional issues to be considered. The Secretary publishes this notice in the FEDERAL REGISTER. If the agency does not receive its notice of additional issues in the required time, any party may request that the presiding officer postpone the hearing. If a request is made, the presiding officer sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Secretary to add, modify, or remove issues.* The Secretary may add, modify, or remove issues if the State agency:

(1) Conforms its plan to Federal requirements; or

(2) Changes its practices or organization to comply with its approved State plan.

(d) *What happens if State action causes the Secretary to add, modify, or remove issues.* (1) If the Secretary specifies new or modified issues, the hearing proceeds on these issues.

(2) (i) If the Secretary removes an issue, the hearing proceeds on the remaining issues. If the Secretary removes all issues, the Secretary terminates the hearing proceedings. The Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Secretary notifies the parties other than the Rehabilitation Services Administration and the State agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Secretary considers these comments and they become part of the record.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.173 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.174 Who presides.

The presiding officer at a hearing is the Secretary or a person the Secretary designates. If the Secretary designates a presiding officer, the Secretary sends copies of the designation notice to the parties.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.175 How to be a party or an amicus curiae to a hearing.

(a) *Rehabilitation Services Administration and State agency.* The Rehabilitation Services Administration and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the Rehabilitation Services Administration Hearing Clerk no more than 15 days following publication of the hearing notice in the FEDERAL REGISTER. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely: (1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issues on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.176 What happens to a petition.

(a) *Petitions to be a party.* (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioners' participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.177 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights an amicus curiae has.*

An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs

If the amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.178 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearing;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Secretary is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Secretary, the officer certifies the entire record to the Secretary, including a recommended decision on each issue in the hearing, but may not make a final decision.

(Sections 12(c), 101(b), 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.179 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26-37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.180 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at a hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.181 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.182 What the record is.

(a) *Official transcript.* The Rehabilitation Services Administration designates the official reporter for a hearing. The Rehabilitation Services Administration Hearing Clerk has the official transcript of testimony, and other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and the Rehabilitation Services Administration. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.183 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.184 Decisions.

(a) *If the Secretary is the presiding officer.* If the Commission is the presiding officer, the Secretary issues a final decision 60 days after the time allowed for filing posthearing or reply briefs ends. The Secretary provides copies of the decision to all parties and any amici curiae.

(b) *If the Secretary appoints a presiding officer.* (1) No later than 30 days after the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Secretary.

(2) The Secretary provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Secretary, exceptions to the recommended decision. The party must file a supporting brief or statement with the exception.

(3) The Secretary reviews the record, and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Secretary issues a final decision. The Secretary provides copies of the decision to all parties and any amici curiae.

(c) If the Secretary decides, after a hearing, that the plan or plan amendment is not approvable, or substantial noncompliance exists, the final decision indicates whether RSA will withhold all further payments or only payments under portions of the plan affected.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.185 When a decision is effective.

(a) The Secretary's decision, which constitutes "final agency action" within the meaning of 5 U.S.C. 704 and a final determination under section 101(b) and (c)(1) of the Act, specifies the effective date for RSA's reduction or withholding of the State's grant. This effective date may not be earlier than the date of the Secretary's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the plan or State agency administration of the plan meets all Federal requirements, except that the Secretary may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.186 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Secretary disapproving the State plan or plan amendment or finding noncompliance. The State must file the appeal within 30 days after receiving the Secretary's final decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

PART 362—PROJECT GRANTS AND OTHER ASSISTANCE IN VOCATIONAL REHABILITATION

Subpart A—[Reserved]

Subpart B—Projects for the Provision of Vocational Rehabilitation Services

Sec.
362.41 Special projects and demonstrations; new approaches to service delivery; making recreational activities accessible to the handicapped.
362.44 Projects for vocational training services.

Subpart C—Assistance for Rehabilitation Facilities

362.50 Project development grants.
362.51 Grants for construction of rehabilitation facilities.
362.52 Initial staffing grants.
362.53 Rehabilitation facility improvement grants.

Subpart D—Rehabilitation Research

362.60 General considerations in the administration of rehabilitation research.
362.61 Rehabilitation research and demonstration.
362.62 Rehabilitation research and training centers.
362.63 Rehabilitation engineering research centers.
362.64 Spinal cord injury research program.
362.65 End-stage renal disease research.
362.66 International program for rehabilitation research, demonstration, and training.

Subpart E—[Reserved]

Subpart F—National Center for Deaf-Blind Youths and Adults

Sec.
362.80 Terms.
362.81 Purpose.
362.82 Proposals.
362.83 Agreement.
362.84 Selection of grantee.

Subpart G—Program and Project Evaluation

362.90 Program and project evaluation.
362.91 Intramural research.

Subpart H—Technical Assistance

362.100 Furnishing of technical assistance.
362.101 Per diem payments.
362.102 Recommendations and reports.

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Subpart A—[Reserved]

Subpart B—Projects for the Provision of Vocational Rehabilitation Services

§ 362.41 Special projects and demonstrations; new approaches to service delivery: making recreational activities accessible to the handicapped.

(a) *Purpose.* Under section 304(b)(2) of the Act, grants may be made for the purpose of paying all or part of the cost of special projects and demonstrations, and research and evaluation in connection with such special projects and demonstrations, for applying new types or patterns of services or devices, including opportunities for new careers for handicapped individuals or other individuals in programs serving handicapped individuals. Under section 304(b)(3) of the Act, grants may be made for the purpose of paying all or part of the cost of special projects and demonstations, and research and evaluation in connection with such special projects and demonstrations, for operating programs (including renovation and construction of facilities, where appropriate) to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(b) *Eligible applicants.* Applications may be made by States and public and other nonprofit agencies and organizations.

(c) *Matching requirements.* Grants may be made for paying all or part of the costs of activities covered under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award and will generally be not less than 10 per centum of the total cost of the project. In projects and demonstrations providing new career opportunities, grantees will be expected to assume an increasing percentage of the new careerist expenses in order to assure that employment commitments will be met.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for:

(1) New careerist salary and training expenses;

(2) Necessary supportive services to enable new careerists to secure employment; and

(3) In the case of a project which involves the renovation of construction of facilities, such costs as are specified in § 362.51(d).

(e) *Project period.* A project may be approved for a project period not to exceed 3 years.

(f) *Evaluative component.* All projects and demonstrations supported under this section shall contain an evaluative component which shall measure program effectiveness.

(g) *Selection of handicapped individuals to participate in a project.* Handicapped individuals to be provided new career opportunities and supportive services under this section will be only those individuals who have been determined by the State agency to be handicapped individuals under § 361.1(k) of this chapter.

(h) *Special considerations in projects and demonstrations providing new career opportunities.* Applicants will provide assurance that the occupations for which training is being provided offer possibilities for continuing full-time employment and realizable opportunity for promotion and advancement through structured channels of promotion.

(i) *Special consideration in projects and demonstrations for making recreational activities accessible to the handicapped.* Approved projects to demonstrate methods of making recreational activities fully accessible to handicapped individuals shall include provisions to:

(1) Ensure conformance with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as modified by other standards prescribed by the Secretary of Housing and Urban Development (24 CFR, Part 40) or the Administrator of General Services (41 CFR 101-17.703) and any other standards established by the Secretary, with the advice of the Architectural and Transportation Barriers Compliance Board, relating to the removal of architectural or transportation barriers;

(2) Focus on as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities and recreational activities related to the fine arts;

(3) Ensure in those projects in which renovation or construction of facilities is involved, that such renovation or construction shall conform with all requirements specified under § 362.51(d)-(g) of this part.

§ 362.44 Projects for vocational training services.

(a) *Terms.* For purposes of this section—

(1) "Training in occupational skills" means a planned and systematic sequence of instruction under competent supervision which is designed to impart predetermined skills and knowledge with respect to a specific occupational objective or a job family, and to assist the individual to adjust to a work environment through the development of appropriate patterns of behavior.

(2) "Work evaluation" means the appraisal of the individual's capacity:

(i) To adjust to a work environment;

(ii) To acquire occupational skills; and

(iii) To attain appropriate vocational goals.

(3) "Work testing" means the utilization of work, simulated or real, to assess the individual's productive, physical, and psychological capacity to adapt to a work environment.

(4) "Job tryouts" means work experience, within a rehabilitation facility or in conjunction with outside industry or other community resources to assist the individual to acquire knowledge and develop skills; and to assess his readiness for job placement or fitness to engage in a specific occupation.

(5) "Vocational training services" includes:

(i) Training with a view toward career advancement;

(ii) Training in occupational skills;

(iii) Related services including work evaluation, work testing, provision of occupational tools and equipment required by the individual to engage in such training, and job tryouts, and

(iv) Payment of weekly training allowances to individuals receiving such training and related services.

(b) *Purpose.* Under section 302(b) of the Act, grants may be made to pay part of the cost of projects for providing vocational training services, leading to maximum employability, to handicapped individuals, especially the most severely handicapped, in public or other nonprofit rehabilitation facilities.

(c) *Eligible applicants.* Applications may be made by States and public and nonprofit organizations and agencies. The rehabilitation facility to be involved in the provision of vocational training services, shall:

(1) Be a public or nonprofit rehabilitation facility;

(2) Have been in operation at least 1 year;

(3) Provide training courses in occupational skills (with the major portion of each course being provided within the rehabilitation facility) and related services including work evaluation, work testing, and job tryouts and the major portion of each of these items with the exception of job tryouts, will be provided within the rehabilitation facility;

(4) Meet occupational health and safety standards prescribed by regulations of the Secretary of Labor;

(5) Substantially meet any standards for rehabilitation facilities established by the Secretary; and

(6) Prepare trainees for gainful employment.

(d) *Matching requirements.* The Federal share shall not exceed 90 per centum of the total cost of the project.

(e) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for the costs of weekly training allowances.

(f) *Project period.* A project may be approved for a project period not to exceed 3 years.

(g) *Assurances from applicant.* In addition to any other requirement imposed under the Act, each grant is subject to the condition that the applicant will furnish assurances that:

(1) Weekly training allowances will not reduce, but will supplement, any wages or other remuneration due to a trainee, and the amount of the payment for the weekly training allowance will be identified and disbursed separately from any payment representing wages or other remuneration due to a trainee;

(2) No trainee will remain in training when it is determined that he is no longer making progress (as indicated by regular training progress reports) toward the completion of his training program or the development of a capability for maximum employability, or in any event for more than 2 years;

(3) In the event any portion of the vocational training services is performed outside the designated rehabilitation facility, the applicant will retain responsibility for the quality of such services; and

(4) The full range of vocational training services will be made available to each trainee to the extent of his need for such services.

(h) *Selection of individuals to participate in a project.* The individuals to receive vocational training services under a project will include only individuals who have been certified as eligible pursuant to § 1361.1(f) of this chapter and have been determined, by the appropriate State agency to be suitable for and in need of such vocational training services. The most severely handicapped individuals shall be selected for participation in a project prior to other handicapped individuals.

(i) *Weekly training allowances.* (1) A weekly training allowance shall be available to each trainee, except that such allowance shall not be paid for any period in excess of 2 years and for any week shall not exceed $30 plus $10 for each dependent, or $70, whichever is less. Dependents shall be included when their relationship to the trainee is that of spouse, parent, child under the age of 21 (including an adopted child or stepchild), or handicapped child whose dependency is related to the handicap, and who are living in the same home with the trainee.

(2) The amount of the weekly training allowance shall be determined in accordance with paragraphs (j) and (k) of this section. The adjusted weekly training allowance available to a trainee shall not be less than $10 per week. To the extent that the weekly training allowance is paid for dependents, the amount shall be $10 per week for each dependent.

(3) The State agency shall make final determination, after consultation with the project facility and in accordance with the training services plan, with respect to the amount of the weekly training allowance and any adjustment to be made in the amount of the allowance.

(j) *Factors considered in determining the amount of weekly training allowances.* In determining the amount of such allowance the following factors shall be considered.

(1) The extent of the need for the allowance including any expenses reasonably attributable to receipt of training services;

(2) The extent to which the allowance will help ensure entry into and satisfactory completion of training; and

(3) The extent to which the allowance will motivate the trainee to achieve a better standard of living.

(k) *Factors considered in adjustment of weekly training allowances.* (1) Adjustment in the weekly training allowance may be made at any time during the individual's training period and the amount of the allowance shall be reviewed periodically. The project facility may propose the adjustment, but the final determination shall be made by the State agency.

(2) In considering whether adjustment is appropriate the following factors will be considered:

(i) Whether the trainee is earning a wage;

(ii) The relationship of the amount of wages, if any, to the amount of the allowance;

(iii) Any other material change in the economic condition of the individual or his family; and

(iv) The effect of any adjustment on the incentive of the trainee.

Subpart C—Assistance for Rehabilitation Facilities

§ 362.50 Project development grants.

(a) *Purpose.* Under section 301(d) of the Act, grants may be made for the purpose of assisting in meeting the costs of planning the development and construction of a specific rehabilitation facility and the services to be provided by such a rehabilitation facility.

(b) *Eligible applicants.* Applications may be made by public or other nonprofit agencies, institutions, or organizations which are either operating or are studying the feasibility of operating a rehabilitation facility.

(c) *Matching requirements.* The Federal share shall not exceed 90 per centum of the total cost of the project.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for

(1) Expenses associated with the use of volunteers; and

(2) Such architectural plannings as is incidental to program planning, but not including working drawings.

(e) *Project period.* A project may be approved for a project period of not more than 12 months.

§ 362.51 Grants for construction of rehabilitation facilities.

(a) *Purpose.* Under section 301(b) of the Act, grants may be made to assist in meeting the costs of construction of public or other nonprofit rehabilitation facilities. Construction of a rehabilitation facility may, where necessary to the effective operation of the facility, include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals.

(b) *Eligible applicants.* Applications may be made by State vocational rehabilitation agencies or other public or nonprofit organizations or agencies which operate or propose to operate a public or other nonprofit rehabilitation facility.

(c) *Matching requirements.* The amount of a grant with respect to any construction project shall be equal to the same percentage of the cost of the project as the Federal share which would be applicable in the case of a rehabilitation facility (as defined in section 645(g) of the Public Health Service Act, 42 U.S.C. 291(a)), in the same location.

(d) *Federal financial participation.*

(1) Federal financial participation may be available for

(i) Acquisition of land in connection with construction of a rehabilitation facility;

(ii) Acquisition of existing buildings;

(iii) Remodeling, alteration, renovation, or expansion of existing buildings;

(iv) Construction of new buildings;

(v) Architect's fees;

(vi) Site survey and soil investigation;

(vii) Fixed or movable equipment;

(viii) Works of art in an amount not to exceed 1 per centum of the total cost of the project; and

(ix) Other costs specifically approved in the application.

(2) Federal financial participation will not be available for the costs of offsite improvements or for the construction of any rehabilitation facility which is or will be used for religious worship or any sectarian activity.

(e) *Project period.* Grants shall be awarded for a project period necessary for the completion of the approved construction project except, however, that any project in which the construction has not begun during the 18-month period immediately subsequent to the approval of the application may be terminated at the end of such period by the Secretary.

(f) *Assurances from applicants.* (1) In addition to any other requirement imposed under the Act, each grant in which construction is to be performed shall be subject to the condition that the applicant will furnish and comply with the following assurances and all other assurances set forth in the application for such grant:

(i) That, for a period of not less than 20 years after completion of construction of the project, it will be used as a public or other nonprofit rehabilitation facility;

(ii) That the applicant will provide a set of plans and specifications for the proposed project which have been approved by the Architectural and Transportation Barriers Compliance Board and in which due consideration shall be given to excellence of architecture and design; and

(iii) That the applicant will furnish an annual report and such other progress reports and other information as the Secretary may require.

(2) The Secretary may, at any time, approve exceptions to these conditions and assurances where he finds that such exceptions are not inconsistent with the Act and the purposes of the program.

(g) *Construction standards and other standards.* (1) Approved projects shall be constructed according to minimum standards of construction and equipment for rehabilitation facilities specified by the Secretary. Applicable State and local codes and regulations must be observed. The Secretary's standards must be followed where they exceed any State and local codes and regulations.

(2) Approved projects shall meet the requirements of the Occupational Safety and Health Act (Pub. L. 91-576); the National Environmental Policy Act of 1969 and Executive Order No. 11514 (34 FR 4247) relative to environmental impact; the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A 117.1-1961, as modified by other standards prescribed by the Secretary of Housing and Urban Development (24 CFR Part 40) or the Administrator of General Services (41 CFR 101-17.703); section 106 of Pub. L. 89-665 relative to the preservation of historic sites; Executive Order No. 11296 (31 FR 10663) relative to the avoidance of flood hazards; the Flood Disaster Protection Act of 1973 (Pub. L. 93-234); Executive Order No. 11288 (31 FR 9261) relative to the prevention, control, and abatement of water pollution; and in the case of State and local agencies, the regulations on relocation assistance and real property acquisition contained in Part 15 of this title.

§ 362.52 Initial staffing grants.

(a) *Purpose.* Under section 301(c) of the Act, grants may be made to assist in paying part of the costs of compensation of the initial professional and technical staff of any public or nonprofit rehabilitation facility constructed after September 26, 1973.

(b) *Eligible applicants.* (1) New applications may be made by public or other nonprofit rehabilitation facilities constructed after September 26, 1973. Continuation applications may be made by those public or other nonprofit rehabilitation facilities constructed prior to September 26, 1973, which were recipients of initial staffing grants on September 26, 1973.

(2) Initial staffing grants may be made only with respect to the operation of a rehabilitation facility following construction. Where the rehabilitation facility is in operation prior to construction, an initial staffing grant shall be made only for additional staff which will enable the facility to provide new services or extend existing services to a substantially increased number of clients. Where the construction consists of expansion, remodeling, alteration, or renovation of an existing rehabilitation facility, such expansion, remodeling, alteration, or renovation shall be extensive enough to result in the addition of new services or the extension of existing services to a substantially increased number of handicapped individuals.

(c) *Matching requirements.* The amount of the Federal share under an initial staffing grant shall be related directly to the date of the commencement of the operation of the rehabilitation facility. The date of commencement of a rehabilitation facility shall be that date on which the first client is admitted for services after the completion of the related construction project or such earlier date after completion of such project as is specified in the approved application for the initial staffing grant. A grant shall not exceed 75 per centum of eligible costs for the period ending with the close of the 15th month following the month in which such operation commenced, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(d) *Federal financial participation.* Federal financial participation may be available for personnel costs (including fringe benefits) of initial staff as set forth in the approved application.

(e) *Project period.* A project may be approved for a project period not to exceed 4 years and 3 months.

§ 362.53 Rehabilitation facility improvement grants.

(a) *Purpose.* Under section 302(c) of the Act, grants may be made for paying part of the costs of projects for rehabilitation facilities, or an organization or combination of such rehabilitation facilities, to analyze, improve, and increase their professional services to handicapped individuals, their management effectiveness or any other part of their capacity to provide employment and services for handicapped individuals.

(b) *Eligible applicants.* Applications may be made by any public or nonprofit rehabilitation facility, organization or combination of such rehabilitation facilities: In the case of rehabilitation facilities, such facilities must have been in operation for at least 12 months.

(c) *Matching requirements.* The Federal share of the approved project costs shall not exceed 80 per centum of the total project cost.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for the costs of staff development activities, including educational leave. Personnel employed under the project shall be limited to additional staff.

(e) *Project period.* A project may be approved for a project period not to exceed 3 years.

Subpart D—Rehabilitation Research

§ 362.60 General considerations in the administration of rehabilitation research.

(a) *Purpose.* The primary purpose of all activities supported under this subpart is the development of new knowledge concerning the rehabilitation of handicapped individuals; the evaluation of existing knowledge in new settings; and the utilization of such knowledge in the delivery of vocational rehabilitation services.

(b) *Research utilization.* Each project approved under this subpart shall contain a plan designed to enhance the prompt utilization of findings of successful research and demonstration projects.

(c) *Coordination with related program activities.* All activities supported under this part shall be administered in close coordination with similar program activities of the Veterans Administration, National Science Foundation, National Academy of Sciences, National Institutes of Health and other public and private agencies and institutions.

(d) *Project period.* A project under this subpart may be approved for a project period not to exceed 5 years.

§ 362.61 Rehabilitation research and demonstration.

(a) *Purpose.* Under section 202(a) of the Act, grants and contracts may be made to pay part of the cost of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational rehabilitation services to handicapped individuals, especially the most severely handicapped individuals.

(b) *Scope of activities.* Projects supported under this section may include medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing disability, ways of ameliorating handicapping conditions, and restorative techniques; studies and analyses of industrial, vocational, social, psychological, economic and other factors affecting the rehabilitation of handicapped individuals; studies of special problems of homebound and institutionalized individuals; studies, analyses and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals; and related activities which hold promise of increasing knowledge and improving methods in the rehabilitation of handicapped individuals especially those with the most severe handicaps.

(c) *Eligible applicants.* Applications for grants or contracts may be made by State agencies and by public or nonprofit agencies, and organizations, including universities and other educational institutions.

(d) *Matching requirements.* Federal funds will be granted on the basis of project applications, and may pay only part of the cost of the supported activity. The applicant must identify its contribution to the support of the project and is expected to finance as large a part of the total cost as possible.

§ 362.62 Rehabilitation research and training centers.

(a) *Purpose.* Under section 202(b)(1) of the Act, grants may be made to pay part or all of the cost of the establishment and ongoing support of rehabilitation research and training centers to be operated in collaboration with institutions of higher education for the purpose of providing coordinated and advanced programs of research in rehabilitation, and training of rehabilitation research personnel, including, but not limited to, graduate training.

(b) *Scope of activities.* Rehabilitation research and training centers must be located in institutions having a well-recognized continuing coordinated program of scientific research designed to solve complex problems regarding the management of disabling conditions and preparation of handicapped individuals for employment, training of research personnel in fields contributing to the rehabilitation of the physically or mentally disabled, and related activities designed for the dissemination and utilization of new scientific knowledge leading to an improvement in the quality of vocational rehabilitation services for handicapped individuals. Individual research projects within the center will be planned so as to contribute in a sequential way to a coherent centralized body of knowledge. Training of research personnel within each center must be conducted in conjunction with the research activities, including to the greatest degree possible, both client care and the generation of scientific knowledge. Research related activities may include implementation and application of research findings; dissemination of new knowledge, methods and techniques in rehabilitation; research related technical assistance to State and other agencies and rehabilitation facilities; and improvement of skills of rehabilitation practitioners.

(c) *Eligible applicants.* States and public or nonprofit agencies and organizations, including institutions of higher education or rehabilitation facilities having well-recognized programs of research and associated with institutions of higher education may apply for center grants provided that the center program has a separate organizational identity.

(d) *Matching requirements.* Grants may be made for paying all or part of the costs of activities conducted under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award.

(e) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for

(1) Stipends for students (including dependency allowances);

(2) Tuition and fees; and

(3) Student travel.

Reimbursement of indirect costs will not exceed 15 per centum of the amount allowed for direct costs exclusive of costs for building alterations, permanent equipment, rental of space, contractual agreements, tuition, post doctoral training allowances, and client services and hospital costs.

(f) *Special considerations in the support of training.* Traineeships awarded under this section shall be subject to the provisions of § 362.76.

§ 362.63 Rehabilitation engineering research centers.

(a) *Purpose.* Pursuant to the requirements of section 201(a)(1) of the Act, grants may be made under section 202(b)(2) to pay part or all of the cost of the establishment and support of rehabilitation engineering research centers to:

(1) Develop innovative methods of applying advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems through planning and conducting research, including cooperative research with public or private agencies and organizations designed to produce new scientific knowledge, equipment, and devices suitable for solving problems in the rehabilitation of handicapped individuals and for reducing environmental barriers, and

(2) Cooperate with State agencies in developing systems of information exchange and coordination to promote the prompt utilization of engineering and other scientific research to assist in solving problems in the rehabilitation of handicapped individuals.

(b) *Scope of activities.* Each rehabilitation engineering research center must be developed around a core research area which will be explored in depth to solve the problems in the rehabilitation of handicapped individuals through the combined efforts of medical, engineering, and related sciences. Each center program must be located in a clinical rehabilitation setting which provides an environment for cooperative research and the transfer of research findings to rehabilitation practice at a reasonable cost. Center programs may emphasize the medical-technological management of disabling conditions, the adjustment to limitations of functions of the individual and the environment, service delivery systems, or other core areas, utilizing the application of new or innovative technology, and as approved by the Secretary. Center programs must cooperate with State agencies in developing systems of information exchange and coordination to ensure the prompt utilization of research findings.

(c) *Eligible applicants.* Universities with recognized, well-developed clinical rehabilitation programs and cooperating medical and engineering schools, and State rehabilitation agencies or public or nonprofit rehabilitation facilities, organizations, or institutions associated with such universities may apply for grants provided that the center program has a separate organizational identity.

(d) *Matching requirements.* Grants may be made for paying all or part of the costs of activities conducted under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award.

§ 362.64 Spinal cord injury research program.

(a) *Purpose.* Under section 202(b)(3) of the Act, grants may be made to pay part or all of the cost of projects for specialized spinal cord injury research, to be coordinated with the special projects and demonstrations for the spinal cord injured under § 362.40. Such research will be designed to:

(1) Ensure dissemination of research findings among all projects supported under this section and under § 362.40(h);

(2) Provide encouragement and support for initiatives and new approaches by individual and institutional investigators; and

(3) Establish and maintain close working relationships with the Veterans Administration, National Institutes of Health, other governmental and voluntary institutions and organizations engaged in similar efforts in order to unify and coordinate scientific efforts, encourage joint planning and promote the interchange of data and reports among spinal cord injury investigators.

(b) *Scope of activities.* Activities under this section must be specifically directed to the achievement of new knowledge for improving rehabilitation services for the spinal cord injured, and techniques and methods connected therewith. Research and demonstration activities must focus upon the medical, psychological, vocational, or social aspects of spinal cord injury rehabilitation. Areas of research emphasis may include, but are not limited to, the development of new rehabilitation techniques and methods, the prevention and treatment of complications; and adjustment of the spinal cord injured to catastrophic disability; innovative vocational, educational and community placement services; methods of follow-up care; and the benefits of various alternative service models. Data collection and analysis components must be included within each project since research results dissemination and utilization will be an essential part of project activities.

(c) *Eligible applicants.* Applications for grants may be made by State agencies, and by other public or nonprofit agencies and organizations, including institutions of higher education, hospitals, clinics and rehabilitation facilities.

(d) *Matching requirements.* Grants may be made for paying all or part of the costs of activities conducted under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award.

§ 362.65 End-stage renal disease research.

(a) Under section 202(b)(4) of the Act, grants may be made to pay part or all of the cost of a program of end-stage renal disease research, to include projects and demonstrations for providing special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the rehabilitation of persons suffering from such disease. Such research will be designed to:

(1) Ensure dissemination of research findings;

(2) Provide encouragement and support for initiatives and new approaches by individual and institutional investigators; and

(3) Establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among investigators in the field of end-stage renal disease.

(b) *Scope of activities.* Activities under this section must be designed as part of a continuum of projects each of which will focus on specific problem aspects of end-stage renal disease. Primary emphasis will be directed to the psycho-social and vocational aspects of end-stage renal disease and the development of experimental techniques and methods for achieving employment. Emphasis will also be directed towards:

(1) Collecting and disseminating information on end-stage renal disease derived under this program and related programs;

(2) Initiating information-sharing activities and interchange of experts in cooperation with public or other nonprofit agencies and organizations; and

(3) Producing and distributing materials necessary to enable the utilization of research findings.

(c) *Eligible applicants.* Applications for grants may be made by State agencies and by other public or nonprofit agencies and organizations, including institutions of higher education.

(d) *Matching requirements.* Grants may be made for paying all or part of the costs of activities supported under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award.

(e) *Federal financial participation.* Federal financial participation will be available for costs specified in § 362.8, and will also be available for:

(1) Medical and technical expenses pursuant to treatment for end-stage renal disease;

(2) Purchase or rental of renal dialysis and other machines and supplies necessary for the treatment of end-stage renal disease, when such machines and supplies are not available

under other Federal, State, or other program resources;

(3) Costs attendant to the training of a patient with end-stage renal disease or members of his family in the use of renal dialysis and related equipment and in other aspects of end-stage renal disease care, including the use of home aides;

(4) Costs attendant to necessary modification of a patient's living quarters;

(5) Hospital and related medical expenses for a donor of a kidney;

(6) Laboratory fees; and

(7) Tissue matching.

(f) *Special grant considerations.* If an individual selected to participate in a program under this section is eligible for and is receiving services for the treatment of end-stage renal disease under any other Federal, State, or other programs, the costs of such services shall not be attributed to a grant under this section.

§ 362.66 International program for rehabilitation research, demonstration, and training.

(a) *Purpose.* Under section 202(b)(5) of the Act, the Secretary may make grants to pay all or part of the cost of a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of handicapped individuals in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of handicapped individuals, and initiating a program to exchange experts and technical assistance in the field of rehabilitation of handicapped individuals with other nations as a means of increasing the levels of skill of rehabilitation personnel.

(b) *Scope of activities: Research and demonstration.* International research and demonstration grants for planning or conducting research in other countries must support, strengthen and, whenever possible, be fully integrated with domestic rehabilitation research activities of high priority to the United States and participating countries. Insofar as possible, research and demonstration projects shall relate to, or be closely affiliated with, a collaborating research center or institution in the United States which is conducting comparable research and demonstration activities. Research projects of high potential which had been initiated under Pub. L. 480 with counterpart funds which are no longer available may be continued under this section in order to take full advantage of rehabilitation research capabilities developed with institutions of higher education, rehabilitation centers and individual researchers in other countries.

(c) *Scope of activities: Training.* Grants may be made with governments and public or nonprofit organizations and agencies cooperating with the United States for short-term training of rehabilitation personnel from the participating countries when such training will be of substantial benefit to handicapped individuals in the United States. Training will be designed to provide each trainee with research as well as practitioner skills. Grants may similarly be entered into with other governments for the training of U.S. citizens in cooperating countries, where such training will lead to the development of new knowledge and methods in the rehabilitation of handicapped individuals in the United States.

(d) *Scope of activities: Information exchange.* Grants may be made with other governments, public or nonprofit domestic and international organizations and agencies to plan, cooperate and assist with the collection, translation, publication and dissemination of international program and research information of significant interest to rehabilitation practitioners and researchers in the United States. International information sharing and utilization conferences, seminars and workshops may be conducted in cooperation with public and nonprofit agencies, and governments to promote the exchange of rehabilitation information in areas of priority rehabilitation concern to U.S. practitioners and researchers.

(e) *Scope of activities: Interchange of experts.* Grants may be made for the interchange of U.S. and foreign scientists, experts, practitioners and administrators engaged in significant rehabilitation research or service programs with special implication for improving rehabilitation knowledge and practice in the United States. Short-term fellowships, including travel and per diem not to exceed a 3 month duration, may be awarded to qualified individuals from the United States and participating countries (if counterpart funds are not available) for lecture tours, demonstrations and practical applications of new and improved techniques, methods and concepts for rehabilitating handicapped individuals.

(f) *Scope of activities: Technical assistance.* In cooperation with the Agency for International Development, the United Nations and other international organizations and agencies, grants may be made to cooperate with and assist countries which request technical assistance in the field of rehabilitation of the handicapped with special emphasis on increasing the levels of skill of rehabilitation personnel. Grants may also be made with other governments or research organizations within countries when such organizations possess specialized or unusual expertise not found in the United States to provide technical assistance to U.S. public and private nonprofit rehabilitation agencies and organizations.

(g) *Eligible applicants.* Applications for grants for international projects of research and demonstrations, international exchange of information and technical assistance may be made by international and domestic public and nonprofit agencies and organizations, including institutions of higher education. Applications for fellowships may be made to the Secretary by qualified experts. A foreign expert and scientist must have approval of the appropriate government ministry of their government before applying for a fellowship. Individuals applying for traineeships and fellowships must be citizens of their respective countries.

(h) *Federal financial participation.* Federal financial participation will be available for costs specified in § 362.8 except that in the case of grantees from other countries, Federal financial participation will not be available in indirect costs and Federal financial participation will be available for costs of equipment only with the prior approval of the Secretary and provided that (1) the equipment has been manufactured by a company owned and located within the United States; (2) the equipment has been proven to be essential for the conduct of the project; (3) the equipment is not available in the country where the project is being conducted; and (4) the research organization does not have sufficient funds to purchase the equipment.

Subpart E—[Reserved]

Subpart F—National Center for Deaf-Blind Youths and Adults

§ 362.80 Terms.

For the purpose of this subpart

(a) "Center" means the National Center for Deaf-Blind Youths and Adults, including its field offices;

(b) "Deaf-blind individuals" means persons who are blind as defined in § 1361.1(b) of this chapter and have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification and the combination of the two disabilities causes extreme difficulty for the person to attain independence in activities of daily living, psychosocial adjustment, or in the pursuit of a vocational objective; and

(c) "Grantee" means the public or nonprofit agency or organization selected as the party to the agreement to receive funds for the construction and operation of the National Center for Deaf-Blind Youths and Adults.

§ 362.81 Purpose.

Under section 305 of the Act, the Secretary may enter into an agreement with any public or nonprofit agency or organization for payment of all or part of the costs of the establishment and operation, including construction and equipment, of a center for the vocational rehabilitation of handicapped individuals who are both deaf and blind, which shall be known as the National Center for Deaf-Blind Youths and Adults.

§ 362.82 Proposals.

The scope of the commitment in the agreement shall encompass, but not be limited to, the following areas of activity:

(a) The construction of a facility for the vocational rehabilitation of handicapped individuals who are both deaf and blind, which will be especially adapted to the needs of deaf-blind individuals;

(b) The demonstration of methods which provide the specialized intensive services and other services, needed to rehabilitate handicapped individuals who are both deaf and blind;

(c) The training of professional and allied personnel needed to staff facilities specifically designed to provide such services and training of such personnel who have been or will be working with deaf-blind individuals.

(d) The conduct of research with respect to the problems of deaf-blind individuals and their rehabilitation;

(e) The conduct of related activities which will expand or improve the services for deaf-blind individuals, and

(f) The improvement of public understanding concerning the needs of deaf-blind individuals.

§ 362.83 Agreement.

The agreement shall:

(a) Provide that Federal funds paid to the grantee for the Center will be used only for the purpose for which paid and in accordance with the applicable provisions of the Act, these regulations, and the terms and conditions of the agreement.

(b) Provide that the grantee will make annual fiscal, progress, and other special reports at such time and in such form as required by the Secretary.

§ 362.84 Selection of grantee.

The selection of the grantee will be made by the Secretary with preference given to the application that:

(a) Gives promise of maximum effectiveness in the organization and operation of the Center, and

(b) Gives promise of offering the most substantial skill, experience and capability in providing a broad program of service, research, training, and related activities in the field of rehabilitation of deaf-blind individuals.

Subpart G—Program and Project Evaluation

§ 362.90 Program and project evaluation.

(a) *Purpose.* Under section 401(a)(1) of the Act, the Secretary shall measure and evaluate the impact of all programs authorized under the Act, in order to determine their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services.

(b) *Awards.* Contracts may be awarded to any agency or organization with the demonstrated capacity to conduct evaluation studies under this subpart. Contracts for the study of program activities conducted under the Act may only be awarded to agencies or organizations which are not immediately involved in the administration of the program or project to be evaluated.

(c) *Standards for evaluation.* Part 1370 of this chapter contains the Secretary's general standards for:

(1) The evaluation of programs authorized under the Act; and

(2) The evaluation of project effectiveness in achieving the objectives of the Act.

(d) *General considerations in program and project evaluation activities.* (1) Evaluation studies shall be conducted only by persons not immediately involved in the administration of the program or project being evaluated.

(2) Where appropriate, comparisons with appropriate control groups, composed of persons who have not participated in such programs, will be included in evaluation studies.

(3) Evaluation studies shall reflect continuing technical competence and program relevance, and shall be designed to assure timely progress.

(4) In carrying out evaluation studies of programs and projects supported under the Act, the Secretary shall, whenever possible, arrange to obtain the specific views of persons participating in such programs and projects,

and handicapped individuals served by such programs and projects.

(e) *Special considerations in the evaluation of rehabilitation research and demonstrations.* (1) The Secretary shall, on an annual basis, and after taking into consideration the views of the State agencies, design evaluation studies concerned with the conduct of rehabilitation research and demonstration activities under Subpart D of this part which shall be used to:

(i) Reassesses priorities to which such activities should be directed; and

(ii) Review present research, demonstration, and related activities to determine in terms of the purposes specified in Subpart D of this part, whether and on what basis such activities should be continued, revised, or terminated.

(2) Within 12 months after enactment of the Act, and on each April 1 thereafter, the Secretary shall prepare and furnish to the appropriate committees of Congress a complete report of such determination and review cited in this section, along with such recommendations as may be appropriate.

§ 362.91 Intramural research.

Under section 400(c) of the Act, the Secretary shall (directly or by grants or contracts) conduct studies, investigations, and evaluation of programs authorized by the Act, and make reports, with respect to abilities, aptitudes, and capacities of handicapped individuals, the development of their potentials, their utilization in gainful and suitable employment, and with respect to architectural, transportation and other environmental and attitudinal barriers to their rehabilitation, including the problems of homebound, institutionalized, and older blind individuals.

Subpart H—Technical Assistance

§ 362.100 Furnishing of technical assistance.

Technical assistance authorized in section 304(e) of the Act will be furnished, directly, or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof to provide technical assistance and consultation:

(a) To public and nonprofit rehabilitation facilities in matters of professional or business practice within the facility and

(b) To public and nonprofit agencies, institutions, organizations, or facilities for the purpose of planning or effecting the removal of architectural and transportation barriers: *Provided* That such technical assistance shall be provided with the concurrence of the Architectural and Transportation Barriers Compliance Board.

§ 362.101 Per diem payments.

Experts or consultants, while providing technical assistance consultations pursuant to § 362.100, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the prorated pay rate for a person employed at a GS-18, under section 5332 of Title 5, United States Code, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in the government service employed intermittently.

§ 362.102 Recommendations and reports.

A rehabilitation facility or public or nonprofit agency, institution, organization or facility which receives technical assistance consultations will be furnished with the recommendations of the consultant. A copy of the recommendations will also be furnished to the appropriate State agency. The rehabilitation facility or public or nonprofit agency, institution, organization or facility receiving the technical assistance will be expected to provide a prompt report to the Rehabilitation Services Administration concerning the consultation and a report 6 months afterwards as to what has been done about the recommendations.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

365.1 The State independent living rehabilitation services program.

Subpart B—State Plans for Independent Living Rehabilitation Services

State Plan Content: Administration

365.2 The State plan: General requirements.
365.3 State plan approval.
365.4 Withholding of funds.
365.5 State unit for administration.
365.6 Staffing of designated State unit.
365.7 Staff development.
365.8 State unit studies and evaluations.
365.9 State plan and policy development consultation.
365.10 Provision of technical assistance in poverty areas.
365.11 Cooperation with other public agencies.
365.12 Utilization of local public and private non-profit agencies, organizations, and facilities.
365.13 Independent living services for older blind individuals.
365.14 Reports.
365.15 Other administrative and fiscal requirements.

State Plan Content: Provision and Scope of Service

365.30 Processing referrals and applications.
365.31 Eligibility.
365.32 Determination of eligibility for independent living rehabilitation services.
365.33 Certification of eligibility or ineligibility.
365.34 Order of selection for services.
365.35 The case record for the individual.
365.36 The individualized written rehabilitation program for independent living rehabilitation services.
365.37 Scope of State unit program; independent living rehabilitation services for individuals.
365.38 Case closure.
365.39 Duration.
365.40 Standards for facilities and providers of services.
365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.
365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.

Sec.

365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

Subpart C—Allotment and Payment

365.44 Allotment of Federal funds for independent living services.
365.45 Payments from allotments for independent living services.

Authority: Section 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Source: 46 FR 5545, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 365.1 The State independent living rehabilitation services program.

(a) General Part 365 includes all requirements relative to the conduct of State independent living rehabilitation service programs under State plans for independent living rehabilitation services authorized under Part A of Title VII of the Rehabilitation Act of 1973, as amended. Part 365 covers the procedures to be followed by a designated State unit in submitting a State plan for approval by the Secretary and the required scope and content of an approvable State plan.

(b) *Regulations which apply to the State independent living rehabilitation services program.* The following regulations apply to the State plan for independent living rehabilitation services program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State administered programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 365.

(c) *Definitions which apply to the State independent living program.* (1) The following terms used in this Part 365 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Public"
"Secretary"
"State"

(2) The following terms used in this Part 365 are defined in 34 CFR 361.1 of this chapter:

"Act"
"Blind"
"Construction of a rehabilitation facility"
"Designated State unit"
"Establishment of a rehabilitation facility"
"Physical and mental restoration services"
"Physical or mental disability"
"Rehabilitation facility"
"State unit"
"Vocational rehabilitation services"

(3) The following definitions also apply to this Part 365:

"Attendant care" means the assistance provided to a severely handicapped individual in performing a variety of tasks required to meet essential personal needs in such areas as bathing, communicating, cooking, dressing, eating, homemaking, toileting and transportation.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Health maintenance" means the provision of those health care services which are necessary for a severely handicapped individual to maintain or improve his or her functional capabilities and those services which might contribute to avoiding complications or reactivations of the severely handicapping impairment or the development of additional impairments.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Independent living rehabilitation services," or "independent living services," when provided to a severely handicapped individual, means those services listed in § 365.37.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Independent living rehabilitation services," or "independent living services," when provided for the benefit of groups of severely handicapped individuals, includes:

(i) The establishment or construction of a rehabilitation facility which provides independent living services to individuals;

(ii) The provision of other facilities and services which promise to contribute substantially to the independent living rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized written rehabilitation program of any one severely handicapped individual;

(iii) The use of existing telecommunications systems; and

(iv) The use of services providing recorded materials for blind individuals and captioned films or videocassettes for deaf individuals.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that it has been determined that independent living rehabilitation services are required in order to enable achieving a greater level of independence in functioning in family or community or engaging or continuing in employment.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

"State plan" means the State plan for independent living rehabilitation services.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Transportation" means necessary travel in connection with a severely handicapped individual's engaging in or maintaining employment or improving his or her ability to carry out independent living activities within family or community.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—State Plans for Independent Living Rehabilitation Services

STATE PLAN CONTENT: ADMINISTRATION

§ 365.2 The State plan: General requirements.

(a) *Purpose.* In order for a State unit to be eligible for grants from the allotment of funds under Title VII of the Act, it must submit an approvable State plan for providing independent living rehabilitation services to severely handicapped individuals.

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, a description of the State's independent living rehabilitation program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes both the State plan for vocational rehabilitation services and the State plan for independent living rehabilitation services. The State may also choose to submit a consolidated plan which includes either or both of the State's rehabilitation plans and the State's plan for services for persons with developmental disabilities developed under the Developmental Disabilities Assistance and Bill of Rights Act.

(d) *Duration.* The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in any applicable phase of State law, organization, policy or agency operations which affects the administration of the State plan

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.3 State plan approval.

Except in the case of the first State plan submitted under Title VII, the State plan must be submitted for approval no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Section 705(b) of the Act; 29 U.S.C. 796d(b))

§ 365.4 Withholding of funds.

(a) *When withheld.* Payments under section 704 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the designated State unit, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 705 of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State unit.* The designated State unit is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the United States Court of Appeals for the circuit in which the State is located, in accordance with section 101(d)(1) of the Act.

(d) *Informal discussions.* Hearings meeting the requirements of § 361.5(a) of this chapter are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 12(c) and 101(c) and 705(b) of the Act; 29 U.S.C. 711(c), 721(c) and 796d(b))

§ 365.5 State unit for administration.

(a) *Designation of State unit.* The State plan must provide that the designated State unit administers the State's independent living rehabilitation service program conducted under this part.

(b) *Designation of State unit for the blind.* The State plan may designate a State commission for the blind or the organizational unit of another agency of the State which is authorized under State law to provide vocational rehabilitation services to blind individuals under a State plan for vocational rehabilitation services, as the State unit to administer that part of the plan under which independent living services are provided to blind individuals.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available independent living rehabilitation services, and the provision of these services are made by the designated State unit, and that this responsibility may not be delegated to any other agency, facility, or individual.

(Sections 12(c) and 705(a)(1) of the Act; 29 U.S.C. 711(c) and 796(a)(1))

§ 365.6 Staffing of designated State unit.

(a) *General staffing requirement.* The State plan must assure that the staff of the designated State unit includes specialist personnel skilled in the coordination and provision of independent living services to severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must also assure that the State unit makes available personnel able to communicate with applicants for service and with severely handicapped individuals who rely on special modes of communication, such as manual communication or nonverbal communication devices, and personnel able to communicate in the native languages of applicants for service and of severely handicapped individuals with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the communities in which the services are being provided.

(Sections 12(c), 101(a)(7), and 705(a) of the Act; 29 U.S.C. 711(c), 721(a)(7), and 796d(a))

§ 365.7 Staff development.

The State plan must assure a program of staff development for all classes of positions involved in providing independent living services within the designated State unit. The staff development program must emphasize improving the skills of staff directly responsible for the provision of independent living services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.8 State unit studies and evaluations.

(a) *Scope of studies.* The State plan must assure that the State unit conducts or has previously conducted studies of the independent living rehabilitation service needs of severely handicapped individuals within the State, including comparative studies of the different methods for providing these services, such as regional and community centers, centers for independent living, halfway houses, and patient-release programs. The State plan must also assure that the State unit conducts studies to determine effective alternatives to institutionalization. Any studies carried out under the plan must fully utilize findings from relevant studies which have been conducted in the past.

(b) *Evaluations.* The State plan must assure that the State unit conducts evaluations of the effectiveness of the State unit's independent living rehabilitation program in meeting the service needs of severely handicapped individuals in the State. These evaluations must measure the adequacy of State unit performance in providing independent living services to severely handicapped individuals, in the light of program and financial resources available in the State.

(c) *Use of findings.* The State plan must also assure that findings from the State's studies and evaluations are utilized in planning for and improving future independent living services.

(Section 705(a)(2) of the Act; 29 U.S.C. 796d(a)(2))

§ 365.9 State plan and policy development consultation.

(a) *Advisory committee.* The State plan must assure that the State unit organizes a committee of severely physically and mentally handicapped persons, which may include parents or guardians of severely handicapped persons as necessary, to consult on a continuing basis in the initial development and periodic revision of the State plan. The members of the advisory committee must serve on a rotating basis after severely handicapped persons in the State have been provided an opportunity to suggest those individuals considered by them to be best qualified to represent severely handicapped individuals in need of independent living services. The State plan must assure that this committee periodically consults with the State unit in matters of policy and program development and implementation which affect the overall administration of the State's independent living rehabilitation service program. The committee must also participate actively in the periodic evaluations of the State's independent living rehabilitation service program.

(b) *Other consultations.* The State plan must also assure that there is a procedure for taking into account the views of providers of independent living services and other individuals interested in services for severely handicapped individuals.

(Sections 12(c) and 705(a)(7) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.10 Provision of technical assistance in poverty areas.

The State plan must assure that the State unit undertakes special efforts to provide technical assistance to public and other nonprofit agencies and organizations located in areas of urban or rural poverty which are interested in developing capability for providing independent living services. The State unit must annually report those special efforts which have been undertaken in this regard.

(Section 705(a)(6) of the Act; 29 U.S.C. 796d(a)(6))

§ 365.11 Cooperation with other public agencies.

The State plan must assure that, to the greatest extent possible, the designated State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, other State and local public agencies which provide services to severely handicapped individuals, including those agencies administering the State's special education, vocational education, and developmental disabilities service programs, public health, mental health, and mental retardation programs, housing, and transportation programs, Veterans Administration programs, and the programs authorized under Title XIX and Title XX of the Social Security Act.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.12 Utilization of local, public and private nonprofit agencies, organizations, and facilities.

(a) *General provisions.* The State plan must assure that the State unit utilizes local public and private nonprofit agencies, organizations, and facilities, as appropriate, to provide independent living services. The State plan must describe the methods and criteria to be used to ensure the appropriate use by the State unit of these local agencies, organizations, and facilities, including entering into agreements with them or making direct grants to them for providing independent living services.

(b) *Special requirements for State unit grantees.* Any agency, organization, or facility awarded a grant by the State unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services. Any agency, organization, or facility awarded a grant by a State unit must also assure that any services provided under the grant are at least of the same quality as services provided directly by the State unit.

(c) *Grants from State units.* At least 20 percent of the funds received by a State under this part must be used to make grants to local public agencies and private nonprofit organizations for the conduct of independent living service programs. The State plan must assure that the State unit makes the availability of funds known to potential applicants within the State and identifies that criteria against which applications for grant funds are evaluated. These criteria must provide priority in the awarding of funds to those agencies and organizations which are directed and managed to a substantial degree by qualified severely handicapped individuals.

(d) *Waiver of grants by State units.* The designated State unit may request from the Secretary a waiver of the requirement that grants in the amount required under paragraph (c) of this section be made for any fiscal year when there is sufficient evidence to determine that the local agencies and organizations cannot use the funds effectively. In waiving this requirement, the Secretary considers such factors as the number of agencies and organizations which have indicated an interest in applying for funds, the capability of these agencies and organizations, and the efforts which have been made by the State unit to improve the capacity of the agencies and organizations for conducting independent living rehabilitation service programs.

(e) *Priority for State unit clients.* When a program of independent living rehabilitation services is conducted by a local public agency or a private nonprofit organization, the program must be designed primarily to serve those severely handicapped individuals who are determined by the State unit to be eligible for independent living services under the State plan.

(f) *State unit plans under related funding programs.* The State plan must specify the State unit's goals and plans with respect to the distribution of any Federal funds received for the establishment and operation of independent living centers under Section 711 of the Act. The State plan must further indicate whether the State unit will directly apply for independent living center grants or whether local public agencies or private nonprofit organizations in the State will have the opportunity to apply for Federal funds under Section 711 of the Act.

(Sections 12(c), 705(a)(8) and 705(a)(3)(A) of the Act; 29 U.S.C. 711(c), 796d(a)(8), and 796(d)(a)(3)(A))

§ 365.13 Independent living services for older blind individuals.

The State plan must assure that the State unit seeks to incorporate within its program of services any new methods or approaches to the provision of independent living rehabilitation services to older blind individuals which have been demonstrated to be effective under a special project under Section 721 of the Act. (Grants for independent living services for older blind individuals). The Secretary advises the State unit when the results of a special project have been found to be effective and requires that they be integrated within the State program to the extent feasible.

(Sections 12(c) and 721(b) of the Act; 29 U.S.C. 711(c) and 796f(b))

§ 365.14 Reports.

The State plan must assure that the State unit submits reports in the form and detail and at the time required by the Secretary, and complies with any requirements necessary to assure the correctness and verification of these reports.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.15 Other administrative and fiscal requirements.

(a) *Applicability of vocational rehabilitation regulations.* Certain regulations covering the State plan for vocational rehabilitation services also apply under this part for purposes of the State plan for independent living rehabilitation services. These regulations include:

§ 361.7 Designation of substitute State vocational rehabilitation agency.

§ 361.10 Methods of administration.

§ 361.15 Affirmative action plan for handicapped individuals.

§ 361.24 General administrative and fiscal requirements (except as provided in paragraph (b) of this section relative to 34 CFR Part 74).

§ 361.44 Authorization of services.

§ 361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.

§ 361.48 Administrative review of agency action, and fair hearing; review by Secretary.

§ 361.49 Protection, use, and disclosure of personal information.

§ 361.76 State and local funds.

§§ 361.170-361.186 Procedures for Hearings on State Plan Conformity and Compliance.

(b) *Program administration.* Federal financial participation is available in expenditures under the State plan for the provision of services and for program planning, development, evaluation, and control; research; advocacy; interpretation of the program to the public; personnel administration, including the administration of affirmative action plans; use of advisory committees; the removal of architectural barriers in State unit offices and facilities; program accreditation; and training and staff development for State unit personnel. All expenditures in which Federal financial participation is claimed under the State plan must be subject to the administrative or supervisory control of the designated State unit.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

§ 365.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications from severely handicapped persons for independent living services.

(Sections 12(c) and 705(a) of the Act: 29 U.S.C. 711(c) and 796d(a))

§ 365.31 Eligibility.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, creed, color, or national origin of the individual applying for service. The State plan must specify that no group of individuals is excluded from service solely on the basis of the type of disability or on the basis of age.

(2) The State plan must assure that no residence requirement is imposed which excludes from services under the plan any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a severe physical or mental disability;

(2) The presence of a severe limitation in ability to function independently in family or community or to engage or continue in employment; and

(3) A reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his or her ability to function independently in family or community or to engage or continue in employment. For purposes of determining an individual's eligibility for independent living services, improvement in ability to function independently in family or community refers to a demonstration in functional and behavioral terms of an individual's greater independence or maintenance of independence in such areas as self-care, activities of daily living, driving, using public transportation, shopping, housekeeping, communicating, or living more independently.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.32 Determination of eligibility for independent living rehabilitation services.

(a) *General provisions.* The State plan must assure that the State unit conducts an evaluation of each severely handicapped person who applies for independent living services. This evaluation is limited to that information necessary to determine whether the individual is eligible to be provided independent living services and to determine which independent living services are needed. The evaluation takes into consideration any relevant case record materials available from files of the designated State unit or from the files of other agencies. A special diagnostic study is conducted specifically for purposes of determining eligibility for independent living services only if already available information is not complete, relevant, or current.

(b) *Scope of evaluation.* The State plan must also assure that the evaluation is sufficient in scope to determine which services will best meet the current and future needs of the individual for functioning more independently in family or community or engaging or continuing in employment.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.33 Certification of eligibility or ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time as acceptance of a severely handicapped individual for independent living rehabilitation services, there must be a certification that the individual has met the basic requirements specified in § 365.31. The State plan must also assure that the certification is dated and signed by an appropriate staff member of the designated State unit.

(b) *Certification of ineligibility.*

(1) The State plan must assure that whenever it is determined that independent living services cannot be expected to assist an individual to

engage or continue in employment or to function more independently in family or community, there must be a certification dated and signed by an appropriate staff member of the State unit.

(2) The State plan must also assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfactions, including procedures for administrative review and fair hearings. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a protection and advocacy project established within the State under section 731 of the Act, and referral is made to other agencies and facilities, including the State's vocational rehabilitation program under Part 361 of this chapter.

(3) The State plan must also assure that when an applicant for independent living services has been certified as ineligible because of a determination that these services cannot be expected to assist the individual to engage or continue in employment or to function more independently in family or community, the individual's current status will be reviewed no later than 12 months after the determination has been made. The review need not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, or the individual's whereabouts are unknown.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.34 Order of selection for services.

The State plan must show the order to be followed in selecting groups of severely handicapped individuals to be provided independent living rehabilitation services when services cannot be provided to all eligible persons who apply. The State plan must assure that first priority is given to those severely handicapped individuals, including homebound individuals, who are not presently receiving vocational rehabilitation services under the State vocational rehabilitation service program under Part 361 because of the severity of their physical or mental disability, and those severely handicapped individuals who are institutionalized, have been institutionalized in the past, or are at risk of becoming institutionalized.

(Sections 12(c), 702(a) and 705(a)(2) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a)(20))

§ 365.35 The case record for the individual.

The State plan must assure that the State unit maintains for each applicant for independent living services and for each individual receiving these services, a case record which includes documentation concerning the individual's eligibility for service and the provision and payment for services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

(a) *General provision.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each severely handicapped individual provided independent living rehabilitation services. The State plan must also assure that each independent living service is provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the appropriate staff member of the State unit and the severely handicapped individual or, as appropriate his or her parent, guardian or other representative. A copy of the written program, and any amendments, must be provided to the severely handicapped individual or, as appropriate, his or her parent, guardian or other representative.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 365.33 and must indicate the goals established for each individual, the services to be provided, and the anticipated duration of the service program and each component service.

(c) *Review.* The State plan must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under Part 361 or to any other program of assistance. Each severely handicapped individual, or, as appropriate, his or her parent, guardian or other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program for any reason, the following conditions and procedures must be met or carried out:

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State, or his or her whereabouts are unknown. When the full participation of the individual or a representative of the individual has been secured in making this decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of independent living services has demonstrated that the individual is not capable of functioning more independently in family or community or engaging or continuing in employment. A certification of ineligibility under § 365.33 is then executed; and

(3) There is a periodic review, at least annually of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, or his or her whereabouts are unknown. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews are undertaken at the request of the individual.

(e) *Coordination with vocational rehabilitation, developmental disabilities and education programs.* The development of the individualized written rehabilitation program for independent living services and the provision of these services must be coordinated to the maximum extent possible with the individualized written rehabilitation program for vocational rehabilitation services for that individual, if there is such a written program. This must also be coordinated with any individualized written habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act or with any individualized education program for the individual prepared under Part B of the Education for All Handicapped Children Act.

(Sections 12(c) and 705(a)(4) and 705(a)(5) of the Act; 29 U.S.C. 711(c) 796d(a)(4) and (5))

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

(a) *Scope of services.* The State plan must specify those independent living services available for meeting the independent living rehabilitation service needs of severely handicapped individuals in the State. The services which may be provided to any severely handicapped individual may be any of the following independent living rehabilitation services, as appropriate:

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation service, and including appropriate accommodations to, and modifi-

cations of, any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services, including:

(i) Physical and mental medical rehabilitation services;

(ii) Dentistry services;

(iii) Nursing services;

(iv) Therapeutic treatment, such as physical therapy, occupational therapy, speech, language and hearing therapy, therapeutic recreation, drama therapy, music therapy, dance therapy and art therapy;

(v) Health maintenance;

(vi) Eyeglasses and visual services; and

(vii) Prosthetic, orthotic and other assistive appliances and devices.

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to live and function more independently, or the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or his or her ability to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of preschool age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services under Part 1361 of this chapter, which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual assisted under this program for similar services.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the quality, scope, and extent of each of the independent living services listed in paragraph (a) of this section which is to be provided under the State program, and the conditions, criteria, and procedures under which the service is to be provided. These policies must assure that when services are being provided solely to assist a severely handicapped individual to secure or engage in employment, the services must be provided under Part 1361 if the individual is also eligible for vocational rehabilitation services.

(Sections 12(c) and 702(b) of the Act; 29 U.S.C. 711(c) and 796a(b))

§ 365.38 Case closure.

The State plan must assure that when all objectives identified for a severely handicapped individual under an individualized written rehabilitation program are achieved, the case is closed. When the case is closed, there must be a record describing the way in which the severely handicapped individual has benefited from independent living rehabilitation services and has significantly improved his or her ability to engage or continue in employment or to function independently in family or community.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.39 Duration.

The State plan must assure that no uniform durational requirement is imposed. The estmated duration of each service must be recorded for each individual under an individualized written rehabilitation program.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.40 Standards for facilities and providers of services.

The State plan must assure that the State unit maintains written standards for the various types of facilities and providers of services utilized by the State unit in providing independent living services to severely handicapped individuals. The designated State unit must assure that providers of service meet all licensure or certification requirements in the State. The State unit must also assure that any facilities used in connection with the delivery of services under this program are free from communication and transportation barriers and meet the standards specified in the Architectural Barriers Act of 1968 and, the "American Standard Specification for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," No. A117.1-1961, as amended, and its implementation standards, 41 CFR Part 101-19.6 et seq.

(Sections 12(c), 101(a)(7) and 705(a)(3) of the Act; 29 U.S.C. 711(c), 721(a)(7) and 796d(a)(3))

§ 365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.

If the State plan provides for the establishment and construction of rehabilitation facilities which provide independent living services, it must further assure that the primary purpose of the establishment of construction of any facility is to provide independent living rehabilitation services to severely handicapped individuals under this part. The provisions of § 361.51 and § 361.52 concerning the establishment and construction of rehabilitation facilities under the State plan for vocational rehabilitation services also apply.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.

The State plan may provide for facilities and services which may be expected to contribute substantially to the rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized rehabilitation program of any one individual. If the State plan includes these facilities and services, it must further assure that the State unit establishes and maintains written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving independent living rehabilitation service delivery methods and the delivery of appropriate programming to meet the particular needs of severely handicapped individuals. The State plan may also provide for the use of special services available to provide recorded material for blind individuals and captioned television, films or video cassettes for deaf individuals. If the State plan includes these services, it must further assure that the State unit shall establish and maintain written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b) and 796a(b))

Subpart C—Allotment and Payment

§ 365.44 Allotment of Federal funds for independent living services.

(a) The allotment of Federal funds for independent living services for each State is computed in accordance with the requirements of section 703 of the Act.

(b) Where the State plan designates separate units to administer the part of the plan under which independent living rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(Section 703 of the Act; 29 U.S.C. 796(b))

§ 365.45 Payments from allotments for independent living services.

The Secretary pays to each State an amount computed in accordance with the requirements of section 704 of the Act. The Federal share is 90 percent except for the cost of construction of rehabilitation facilities where the Federal share may be no more than 50 percent.

(Section 704 of the Act; 29 U.S.C. 796(c))

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

Sec.
366.1 What is the Centers for Independent Living Program?
366.2 Who is eligible for assistance under this program?
366.3 What regulations apply to this program?
366.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

366.10 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

366.30 How does the Secretary evaluate an application?
366.31 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

366.40 What are the matching requirements?
366.41 How are services to be administered under this program?
366.42 What the requirements pertaining to the protection, use, and release of personal information?

AUTHORITY: Sections 12(c) and 711 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 796(e)), unless otherwise noted.

SOURCE: 46 FR 5411, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 366.1 What is the Centers for Independent Living Program?

This program is designed for planning, establishing and assisting in the continuing operation of centers for independent living.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.2 Who is eligible for assistance under this program?

(a) Applications may be made by designated State vocational rehabilitation units.

(b) If a designated State unit has failed to submit an application within six months after the beginning of a fiscal year or if a State unit has advised the Secretary in writing at any time within six months after the beginning of a fiscal year of its decision not to submit an application, applications for Federal assistance may be made by local public agencies and by private nonprofit organizations within the State. The written statement of a designated State unit decision not to apply is binding for that fiscal year.

(Sections 711 (a) and (d) of the Act; 29 U.S.C. 796e(d))

§ 366.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct grant programs);

(b) The regulations in EDGAR, 34 CFR Part 77 (Definitions); and

(c) The regulations in this Part 366.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.4 What definitions apply to this program?

(a) The following definitions in 34 CFR Part 77 apply to this program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Project

Project Period
Public
Secretary

(b) The following definitions also apply to the Centers for Independent Living Program—

"Center for independent living" means a program of services or a facility which offers a combination of independent living services for severely handicapped individuals or groups of severely handicapped individuals such as:

(1) Intake counseling to determine the severely handicapped individual's need for specific independent living services;

(2) Referrals and counseling services with respect to attendant care;

(3) Attendant care and the training of personnel to provide attendent care;

(4) Counseling and advocacy services with respect to legal and economic rights and benefits;

(5) Peer counseling;

(6) Independent living skills, counseling and training, including training in the maintenance of necessary equipment, training in job seeking skills, counseling on therapy needs and programs, and special independent living skill training for blind individuals or deaf individuals;

(7) Housing and transportation referral and assistance;

(8) Surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;

(9) Health maintenance programs;

(10) Community group living arrangements;

(11) Education and training necessary for living in the community and participating in community activities;

(12) Individual and group social and recreational activities;

(13) Interpreter services for deaf or deaf-blind individuals and reading services for blind individuals; and

(14) Other programs and services necessary to provide resources, training, counseling, services or other assistance of substantial benefit in promoting the independence, productivity and quality of life for severely handicapped individuals.

(Section 711(c) of the Act; 29 U.S.C. 796e(c))

"Designated State unit" or "designated State vocational rehabilitation unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(3))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment. Independent living rehabilitation services needed by a severely handicapped individual are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR Part 361.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 366.10 What specific activities may be supported under this program?

(a) The Centers for Independent Living Program provides financial assistance for planning, establishing and operating centers for independent living. Grant funds under this program must be used only for establishing new centers for independent living or expanding or improving ongoing centers of independent living;

(b) Grant funds may not be used in whole or in part to supplant other existing funding support already being used by a center for independent living.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 366.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application under this program on the basis of the criteria specified in § 366.31. The maximum possible score for each complete criterion is stated in parentheses. The number of points awarded for each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 points for these criteria.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.31 What selection criteria does the Secretary use in this program?

(a) *Evidence of need* (5 points).

(1) The Secretary reviews each application for information that shows that the need for the project has been adequately justified;

(2) The Secretary looks for information that shows that need for the Center for Independent Living has been established in terms of existing programs and facilities and includes an assessment of the potential of the existing programs and facilities to meet service needs for independent living services of severely handicapped individuals in the geographical area to be served.

(b) *Plan of operation* (25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Service comprehensiveness* (15 points).

(1) The secretary reviews each application for information that shows the comprehensiveness of the services to be available in each center.

(2) The Secretary looks for information that shows—

(i) Evidence that the center will utilize all presently available services;

(ii) Evidence that effort will be made to provide as many as possible of the services identified in the definition of "center for independent living" in § 366.4(b); and

(iii) Evidence that the project will service individuals with a broad range of disabilities including disabled persons who may have limited knowledge about the project such as the mentally retarded and the sensory impaired.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Involvement of severely handicapped persons* (20 points).

(1) The Secretary reviews each application for information that shows that severely handicapped persons are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that severely handicapped persons or their parents, guardians or other representatives, as appropriate, will be substantially involved in planning, policy direction and management of the center and, to the greatest extent possible, will be employed by the center.

(f) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 366.40 What are the matching requirements?

No minimum share is required of applicants but each applicant is encouraged to furnish as large a part of the total project costs as possible.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.41 How are services to be administered under this program?

The designated State unit may either directly operate a center for independent living or a group of centers or it may award one or more contracts to other public or nonprofit agencies or organizations in the State for the purpose of operating a center or a group of centers.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.42 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his representative, has been obtained in writing. The Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.
369.1 What are the Vocational Rehabilitation Service Projects?
369.2 Who is eligible for assistance under these programs?
369.3 What regulations apply to these programs?
369.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For A Grant?

369.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make A Grant?

369.30 How does the Secretary evaluate an application?
369.31 What general selection criteria does the Secretary use in reviewing an application?
369.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met By A Grantee?

369.40—369.41 [Reserved]
369.42 What special requirements affect provision of services to handicapped individuals?
369.43 What are the affirmative action plan requirements affecting grantees?
369.44 What are the special requirements for projects that involve construction?
369.45 What wage and hour standards apply to workshops?
369.46 What are the special requirements pertaining to the membership of project advisory committees?

Sec.
369.47 What are the special requirements pertaining to the protection, use, and release of personal information?
369.48 What are the special requirements affecting the collection of data from State agencies?

AUTHORITY: Sections 12(c), 112, 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 77a(a)(3), 777(b), 777f and 795g, unless otherwise noted.

SOURCE: 46 FR 5417, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to handicapped individuals and other persons.

(b) The Secretary awards financial assistance through the following programs—

(1) Client Assistance Projects (34 CFR Part 370).

(2) Handicapped American Indian Vocational Rehabilitation Service Projects (34 CFR Part 371).

(3) Comprehensive Rehabilitation Centers (34 CFR Part 372).

(4) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (34 CFR Part 373).

(5) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (34 CFR Part 374).

(6) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (34 CFR Part 375).

(7) Projects for Initiating Special Recreation Programs for Handicapped Individuals (34 CFR Part 378).

(8) Projects with Industry (34 CFR Part 379).

(Secs. 112, 130, 305, 306, 311a, 311(a)(3), 312, 316, 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777a(a)(1), 777a(a)(3), 777(b), 777f and 795g)

§ 369.2 Who is eligible for assistance under these programs?

(a) *Client Assistance Projects.* State vocational rehabilitation agencies are eligible for assistance to support client assistance projects.

(Sec. 112 of the Act; 29 U.S.C. 732)

(b) *Handicapped American Indian Vocational Rehabilitation Service Projects.* Governing bodies of Indian tribes located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped American Indians.

(Section 130 of the Act; 29 U.S.C. 750)

(c) *Comprehensive Rehabilitation Centers.* State vocational rehabilitation units are eligible for assistance to support comprehensive rehabilitation center projects.

(Section 305 of the Act; 29 U.S.C. 775)

(d) *Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals.* States and public and other nonprofit agencies and organizations are eligible for expanding or otherwise improving vocational rehabilitation services to handicapped individuals.

(Section 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(e) *Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support special projects and demonstrations for making recreational activities accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777(a)(3))

(f) *Handicapped Migratory Agricultural Worker and Seasonal Farmworker Vocational Rehabilitation Service Projects.* State vocational rehabilitation agencies or local agencies administering vocational rehabilitation programs under written agreements with State agencies are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers.

(Section 312 of the Act; 29 U.S.C. 777(b))

(g) *Projects for Initiating Special Recreation Programs for Handicapped Individuals.* State and public nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for handicapped individuals.

(Section 316 of the Act; 29 U.S.C. 777(f))

(h) *Projects with Industry.* Any industrial, business, or commercial enterprise; labor organization; employer; industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting is eligible for assistance to support a project with industry.

(Section 621 of the Act; 29 U.S.C. 795(g))

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs under Rehabilitation Services—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs);

(b) The regulations in EDGAR 34 CFR Part 77 (General);

(c) The regulations in this Part 369; and

(d) The regulations in Parts 370, 371, 372, 373, 374, 375, 378 and 379, as appropriate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant
Application
Award
Budget Period
Department

EDGAR
Nonprofit
Profit
Project Period
Public
Secretary
Work of Art

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(1) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(2) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Handicapped individual" means an individual:

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Physical and mental restoration services" means:

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthotic or other assistive devices including hearing aids essential to obtaining or retaining employment;

(i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy;

(m) Speech and hearing therapy;

(n) Psychological services;

(o) Therapeutic recreation services;

(p) Medical or medically related social work services;

(q) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(r) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(s) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(1) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Prevocational conditioning or recreational therapy;

(4) Physical and occupational therapy;

(5) Speech and hearing therapy;

(6) Psychological and social services;

(7) Evaluation of rehabilitation potential;

(8) Personal and work adjustment;

(9) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services and other adjustment services to blind individuals; and

(12) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act; 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(1) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services. (34 CFR Part 361)

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"State unit," "State vocational rehabilitation unit" or "designated State unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily

concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act 29; U.S.C. 706(3))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Vocational rehabilitation services" when provided to an individual, means:

(i) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(ii) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(iii) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(iv) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(v) Maintenance;

(vi) Transportation;

(vii) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(viii) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(ix) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for the blind;

(x) Telecommunications, sensory and other technological aids and devices;

(xi) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(xii) Placement in suitable employment;

(xiii) Post-employment services necessary to maintain suitable employment;

(xiv) Occupational licenses, including any license, permit or other written authorization from any governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(xv) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(1) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(2) The establishment of a rehabilitation facility;

(3) The construction of a rehabilitation facility;

(4) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(5) The use of existing telecommunications systems; and

(6) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b).)

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155-75.159.

(Section 12)(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 369.31 and specific selection criteria identified in Parts 370, 371, 372, 373, 374, 375, 378 and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in § 370.30, § 371.30, § 372.30, § 373.30, § 374.30, § 375.30, § 378.30, and § 379.30. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.31 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups;

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this criterion will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and Parts 370, 371, 372, 373, 374, 375, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Section 12(c) of the Act; 29 U.S.C. 711(a)).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 369.40—369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to handicapped individuals?

Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Section 306(h) of the Act; 29 U.S.C. 776(h))

§ 369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.44 What are the special requirements for projects that involve construction?

(a) A project which involves construction (the construction of new buildings and the acquisition, expansion, remodeling, alteration, and renovation of existing buildings) under these programs must meet the following requirements in addition to those requirements specified in 34 CFR 75.600-75.615—

(1) Plans and specifications must be approved by the Architectural and

Transportation Barriers Compliance Board.

(2) The grantee must ensure that the facility will be used as a public or nonprofit facility for at least 20 years after completion of the project;

(3) The grantee must assure that Federal funds are used only for the purposes for which the funds were provided; and

(4) The grantee must operate and maintain the facility in accordance with applicable Federal, State, and local requirements for the maintenance and operation of rehabilitation facilities.

(b) The construction of a rehabilitation facility which is primarily a workshop may include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals if it is necessary to the effective operation of the facility.

(c) Federal financial participation is not available for the costs of offsite improvements or for the construction of any facility used for religious worship or sectarian activity.

(Sections 12(c) and 306 of the Act; 29 U.S.C. 711(c) and 776)

§ 369.45 What wage and hour standards apply to workshops?

All applicable Federal and State wage and hour standards must be observed in projects carried out in workshops.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.46 What are the special requirements pertaining to the membership of project advisory committees?

When an advisory committee is established under a project, its membership must include handicapped persons or other representatives of handicapped individuals and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.47 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.48 What are the special requirements affecting the collection of data from State agencies?

When the collection of data is necessary either from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

PART 370—CLIENT ASSISTANCE PROJECTS

Subpart A—General

Sec.

370.1 What is the Client Assistance Projects Program?
370.2 Who is eligible for assistance under this program?
370.3 What regulations apply to this program?
370.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

370.10 What types of projects are authorized under this program?
370.11 What are the responsibilities of counselors employed in these projects?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

370.30 What selection criteria does the Secretary use under this program?
370.31 What other factors does the Secretary consider when awarding grants under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

370.40 What are the matching requirements?
370.41 What are allowable costs?
370.42 Must the State agency directly administer each project?
370.43 What are the special requirements affecting project staff?
370.44 What are the special requirements affecting accessibility to service?
370.45 What are the special requirements affecting coordination with related programs?

AUTHORITY: Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732.

SOURCE: 46 FR 5421, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 370.1 What Is the Client Assistance Projects Program?

This program is designed to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits and their rights in seeking these benefits under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732)

§ 370.2 Who is eligible for assistance under this program?

Applications may be submitted only by State agencies.

§ 370.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 370.

(Section 112 of the Act; 29 U.S.C. 732)

§ 370.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically under this program—

(1) "Client or client applicant" means an individual who—

(i) Is seeking vocational rehabilitation services from the State agency; or

(ii) Has been receiving vocational rehabilitation services from the State agency, but the services have been terminated and he or she is seeking assistance in connection with the termination of the services.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(2) "Counselor" means a client assistance worker who functions as an ombudsman.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(3) "Project area" means the geographical or administrative area served by project counselors and designed in a manner to facilitate client or client applicant accessibility to the project. A project area may be a rehabilitation facility, a State agency district office, or a special unit for a specific disability, and in some cases, may be Statewide.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 370.10 What types of projects are authorized under this program?

The Client Assistance Projects Program provides financial assistance for projects that make available counselors to assist clients and client applicants in their relationships with the projects, programs, and facilities providing services to them under the Act and to help them pursue legal, administrative, and other appropriate remedies available to ensure the protection of their rights under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732(a))

§ 370.11 What are the responsibilities of counselors employed in these projects?

Counselors employed within projects under this part are responsible for:

(a) Helping clients or client applicants to understand the vocational rehabilitation services program;

(b) Advising clients or client applicants of benefits available to them under the vocational rehabilitation program and related Federal and State assistance programs, and their rights and responsibilities in connection with these benefits;

(c) Otherwise assisting clients and client applicants in their relationships with projects, programs, and facilities providing vocational rehabilitation services under the Act;

(d) Helping clients or client applicants primarily by referring them for assistance in pursuing legal, administrative and other available remedies when necessary to ensure the protection of their rights under the Act; and

(e) Advising State agencies of identified problem areas in the delivery of vocational rehabilitation services to handicapped individuals and suggesting methods and means of improving State agency performance.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 370.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (25 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Benefit to handicapped community* (35 points).

(1) The Secretary reviews each application for information that demonstrates that the project will be of substantial benefit to handicapped individuals in the project area.

(2) The Secretary looks for information that shows that—

(i) The project holds promise of increasing consumer satisfaction with vocational rehabilitation services within the project area; and

(ii) Handicapped persons or their representatives will be significantly involved in the planning and administration of the project.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.31 What other factors does the Secretary consider when awarding grants under this program?

In awarding grants under this program, the Secretary also considers—

(a) Whether the applicant State agency has been awarded a Client Assistance Project in the past; and

(b) Whether the project will provide a Statewide network of service.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 370.40 What are the matching requirements?

The grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the costs of client, client applicant, or attendant travel in connection with the provision of assistance is also allowable under this program.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.42 Must the State agency directly administer each project?

The State agency may directly administer the project or it may administer the project through a public or nonprofit agency or organization.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.43 What are the special requirements affecting project staff?

(a) No project employee may be a person who is concurrently serving as staff or consultant, or who is receiving benefits of any kind directly or indirectly for any rehabilitation project, program or facility assisted under the Act in the project area, except for individuals receiving traineeships under the Rehabilitation Training Program under Section 304 of the Act.

(b) The project director must have direct access to the director of the designated State unit of the State agency and shall report directly to the director of his designate if the project is administered directly by the State agency. The project director is expected to participate in all policy and program development activities affecting the conduct of the project and shall be assured of access to personnel in any field office affected by the project. The project director must also have access to policy making and administration personnel in other State and local rehabilitation programs, projects and facilities.

(c) A counselor must be able to participate in any administrative review of agency action, or any fair hearing conducted in connection with a client or client applicant being assisted under this program.

(d) Maximum effort must be made to enter into cooperative arrangements with institutions of higher education to secure the services of graduate students who are undergoing clinical training in rehabilitation related fields, and in fields related to the protection and advocacy of handicapped persons except that no compensation with funds appropriated under the Act will be provided to such students in connection with their participation in a project under this program.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.44 What are the special requirements affecting accessibility to service?

All clients or client applicants within the project area must have the opportunity to receive client assistance services under the project.

(Section 112(b) of the Act; 29 U.S.C. 732(b))

§ 370.45 What are the special requirements affecting coordination with related programs?

Project activities must be fully coordinated with other programs and activities carried out under this Act and under the Developmental Disabilities Assistance and Bill of Rights Act in the project area which are related to the protection and advocacy of the rights of handicapped persons and there must be agreements with these other programs in order to define the extent of the coordinated effort.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

PART 371—HANDICAPPED AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?
371.2 Who is eligible for assistance under this program?
371.3 What regulations apply to this program?
371.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

371.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures under this program?

Sec.
371.21 What are the special application requirements related to the State plan Program?

Subpart D—How Does the Secretary Make a Grant?

371.30 What selection criteria does the Secretary use under this program?
371.31 How are grants awarded?

Subpart E—What Conditions Apply to a Grantee Under this Program?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

AUTHORITY: Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750, unless otherwise noted.

SOURCE: 46 FR 5423, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?

This program is designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes located on Federal and State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 371.

(Section 130 of the Act; 29 U.S.C. 750)

§ 371.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program;

(b) The following definitions also apply specifically to this program—

(1) "American Indian" means a person who is a member of an Indian tribe.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(2) "Governing bodies of Indian tribes" means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(3) "Indian tribe" means any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(4) "Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Sections 12(c) and 130(e) of the Act; 29 U.S.C. 711(c) and 750(e))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 371.10 What types of projects are authorized under this program?

The Handicapped American Indian Vocational Rehabilitation Service Projects Program provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for handicapped American Indians who reside on Federal or State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

(Section 130(b) of the Act; 29 U.S.C. 750(b))

§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR Part 361.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) All decisions affecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

(Sections 12(c) and 101(a) of the Act; 29 U.S.C. 711(c) and 721(a))

(c) Priority in the delivery of vocational rehabilitation service will be given to those handicapped American Indians who are the most severely handicapped.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of handicapped individuals to be served under the program will be specified if services cannot be provided to all eligible handicapped American Indians who apply.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each handicapped American Indian being served.

(Sections 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(9))

(f) Handicapped American Indians living on Federal or State reservations where service programs are being carried out under this Part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(Sections 12(c) and 101(a)(18) of the Act; 29 U.S.C. 711(c) and 721(a)(18))

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other handicapped individuals who reside in the State or States being served.

(Sections 12(c) and 101(a)(11) of the Act; 29 U.S.C. 711(c) and 721(a)(11))

(h) Any similar benefits available to handicapped American Indians under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR Part 361.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(i) Any handicapped American Indian applicant or recipient of services who is dissatisfied with any action with regard to the provision or denial of a vocational rehabilitation service under this program may file a request for an administrative review of the action by a member of the supervisory staff of the organization administering the program. If the client is still dissatisfied, he or she may request a fair hearing before the project administrator, or the next higher level in the administrative structure of the tribal organization.

(Sections 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

(j) Minimum standards will be established for facilities and providers of service which will be comparable to the standards set by the designated State unit or designated State units in the State or States in which the program is to be provided; and

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

(k) Maximum use will be made of public or other vocational or technical training facilities or other appropriate community resources.

(Sections 12(c) and 101(a)(12) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

Subpart D—How Does the Secretary Make a Grant?

§ 371.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (20 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need for project* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the special project has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The extent to which vocational rehabilitation services are provided by the State vocational rehabilitation unit to handicapped American Indians residing on reservations;

(ii) The extent to which the provision of vocational rehabilitation services through a tribal rehabilitation service program would expand or improve rehabilitation services for handicapped American Indians.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Subpart E—What Conditions Apply to A Grantee Under This Program?

§ 371.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of the project.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

§ 371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist the handicapped individual to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to handicapped individuals not residing on Federal or State reservations.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

§ 371.42 How are services to be administered under this program?

A governing body may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for handicapped American Indians. A governing body may also enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project which serves more than one Indian tribe. In any case, to the maximum extent feasible, the vocational rehabilitation service program must be comparable in type and quality to that provided by the State unit or units in the State or States in which the program is being carried out and each tribal program must be administered by a special tribal organizational unit for vocational rehabilitation.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.43 What other special conditions apply to this program?

(a) Any handicapped American Indian who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to handicapped American Indians.

(c) The provisions of Sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

PART 372—COMPREHENSIVE REHABILITATION CENTERS

Subpart A—General

Sec.

372.1 What is the Comprehensive Rehabilitation Centers Program?
372.2 Who is eligible for assistance under this program?
372.3 What regulatios apply to this program?
372.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

372.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

372.20 What are the special application requirements for this program?

Subpart D—How Does the Secretary Make a Grant?

372.30 What selection criteria does the Secretary use?
372.32 Is there a priority for the use of existing facilities?

Subpartart E—What Conditions Must Be Met by a Grantee?

372.40 What are the matching requirements?
372.41 What are allowable costs?
372.42 How are services to be administered under this program?

Sec.
372.43 What special conditions apply under this program to projects that involve construction?

AUTHORITY: Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775, unless otherwise noted.

SOURCE: 46 FR 5425, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 372.1 What is the Comprehensive Rehabilitation Center Program?

This program is designed to establish or operate comprehensive rehabilitation centers which serve primarily as centers for the development, delivery, and coordination of vocational rehabilitation services and other services needed by handicapped persons in the community.

(Section 305(a) of the Act; 29 U.S.C. 775(a))

§ 372.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation units.

(b) A State vocational rehabilitation unit which has been awarded a grant under this program may award a subgrant to a unit of general purpose local government or to any other public or nonprofit private agency or organization or enter into a contract with agencies or organizations in the community.

(Sections 305(a), (c) of the Act; 29 U.S.C. 775(a), (c))

§ 372.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 372.

(Section 305 of the Act; 29 U.S.C. 775)

§ 372.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically to this program—

(1) "Comprehensive rehabilitation center" means a facility or group of facilities which serves as a focal point within a community for the development and delivery of services for handicapped persons and other persons.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

(2) "Handicapped person" means an individual of any age who has a physical or mental disability.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 372.10 What types of projects are authorized under this program?

A comprehensive rehabilitation center established or operated under this program may function as a community information and referral resources center for handicapped persons and for other public and other nonprofit agencies in the community which serve handicapped persons. A comprehensive rehabilitation center may, in addition, directly provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to handicapped persons.

(Section 305(a) of the Act; 29 U.S.C. 775)

Subpart C—How Does One Apply for a Grant?

§ 372.20 What are the special application requirements for this program?

The need for the establishment of a comprehensive rehabilitation center must be identified by the State unit in the State planning for rehabilitation facilities required under 34 CFR Part 361 before an application may be submitted under this program.

(Sections 12(c), 101(a)(15) and 305 of the Act; 29 U.S.C. 711(c), 721(a)(15) and 775)

Subpart D—How Does the Secretary Make a Grant?

§ 372.30 What selection criteria does the Secretary use?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the comprehensive rehabilitation center has been adequately justified.

(2) The Secretary looks for information that shows that the need for the comprehensive rehabilitation center has been established in terms of services already available in the community and includes an assessment of community information, referral and service delivery needs not being adequately met.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.32 Is there a priority for the use of existing facilities?

The Secretary gives priority in awarding grants for establishing or operating comprehensive rehabilitation centers at facilities which are already in operation.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 372.40 What are the matching requirements?

(a) The Federal share of any grant awarded to a designated State unit may not be more than 80 percent of the total costs of the project.

(b) No subgrant or contract awarded by a State unit to a general purpose local government unit, a public or other nonprofit agency or organization, or other agencies or organizations may pay more than 80 percent of the total cost of establishing or operating a comprehensive rehabilitation center under this program.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.41 What are allowable costs?

In addition to these allowable costs established in EDGAR §§ 75.530-75.534, the following items are allowable costs under this program—

(a) Salaries of additional professional and technical personnel required to operate a comprehensive rehabilitation center;

(b) Acquisition of equipment necessary for operating a center;

(c) Expansion, remodeling or alteration of an existing building when necessary to adapt it or increase its effectiveness for use as a comprehensive rehabilitation center;

(d) Leasing of a facility to serve as a comprehensive rehabilitation center; and

(e) Works of art in an amount not to exceed one percent of the total cost of the project when the expansion, remodeling or alteration of an existing building is involved.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 372.42 How are services to be administered under this program?

(a) Services may be provided within the comprehensive rehabilitation center directly by the agency or organization or the group of agencies or organizations which is operating the center or they may be provided by other agencies or organizations using either their own facilities or the facilities of the center;

(b) The facilities of the center are expected to be made available for recreational activities for handicapped persons;

(c) To the maximum extent possible, the center must provide upon request to other public and other nonprofit agencies, organizations, facilities and other entities in the community information services and technical assistance necessary to assist them in complying with the requirements of this

Act, with special reference to the requirements under Section 504 of the Act. Technical assistance includes both the maintenance of rosters of special support personnel available within the community such as interpreters for the deaf, readers for the blind, attendants, legal aid and advocacy personnel, and the coordination of referrals of these personnel;

(d) Any center established or operated under this program must be located in close proximity to the majority of the handicapped persons in the community to be served; and

(e) Information and referral services provided by a center must be fully coordinated with information and referral services provided by the State unit under the State plan for vocational rehabilitation services under 34 CFR Part 361 or by any other public or other nonprofit agency or organization in the community.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.43 What special conditions apply under this program to projects that involve construction?

New facilities are established through the expansion, remodeling, or alteration of an existing building only after it has been fully demonstrated that there are no existing facilities in the community with the potential for developing and delivering adequate services under this program. If the expansion, remodeling, or alteration of an existing building is involved, each facility must comply with the requirements specified under Part 369, and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?
373.2 Who is eligible for assistance under this program?
373.3 What regulations apply to the program?
373.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

373.10 What types of projects are authorized under this program?
373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?
373.12 What specific activities must be supported under this program to provide services to blind individuals?
373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

373.30 What selection criteria does the Secretary use under this program?

Subpart E—What conditions Must be Met by a Grantee?

373.40 What are the matching requirements?
373.41 What are allowable costs?
373.42 What special conditions apply under this program to projects that involve construction?

AUTHORITY: Sections 12(c) and 311(a)(1) of the Act; 29 U.S.C. 711(c) and 777(a)(1), unless otherwise noted.

SOURCE: 46 FR 5427, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services for severely handicapped individuals.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.2 Who is eligible for assistance under this program?

Applications may be made by States and public and other nonprofit agencies and organizations.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.3 What regulations apply to the program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 373.

(Section 311 of the Act; 29 U.S.C. 777(a))

§ 373.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 373.10 What types of projects are authorized under this program?

Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped. Handicapped individuals served under this program include individuals with spinal cord injuries, blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary.

§ 373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?

Projects in which vocational and other rehabilitation services are provided to individuals with spinal cord injuries, whether administered separately or in coordination with a larger program supported in part under Title II of the Act, must—

(a) Establish a multi-disciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, include acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow-up and health maintenance. The system must be established on an appropriate geographical basis which reflects patterns of patient flow and must be administered in close coordination with similar programs of the National Institute of Handicapped Research, the Veterans Administration, the National Institute of Health, and other public and private agencies and institutions;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within it;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management and rehabilitation of individuals with spinal cord injury; and

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities.

(Section 311(b) of the Act; 29 U.S.C. 77a(b))

§ 373.12 What specific activities must be supported under this program to provide services to blind individuals?

Projects in which services are provided to blind individuals must—

(a) Demonstrate innovative methods of providing intensive rehabilitation services needed to rehabilitate blind individuals; or

(b) Provide mobility training services or comprehensive counseling services not otherwise available in the locality in which individuals served by the project reside; or

(c) Conduct coordinated rehabilitation service activities with other public or nonprofit agencies serving blind individuals in the same area.

(Section 311(a) of the Act; 29 U.S.C. 777(a))

§ 373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Projects in which services are provided to deaf individuals must—

(a) Demonstrate innovative methods of providing the specialized services needed to rehabilitate and make maximum use of the vocational potential of deaf individuals; or

(b) Conduct coordinated activities with other public and nonprofit agencies administering programs for deaf persons in the same area in order to expand or improve rehabilitation services for deaf individuals.

(Section 311(a) of the Act; 29 U.S.C. 777a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 373.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (20 Points). The Secretary reviews each application in accordance with the criterion in § 369 31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Service comprehensiveness* (20 Points).

(1) The Secretary reviews each application for information that shows that the services to be provided within the project are comprehensive in scope.

(2) The Secretary looks for information that shows that—

(i) A broad range of vocational rehabilitation services and other rehabilitation services will be available to severely handicapped individuals within the project;

(ii) Services will be coordinated with those services provided by other appropriate community resources;

(g) *Relevance to State-Federal rehabilitation service program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that—

(i) The project will be designed primarily for severely handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units;

(ii) The State vocational rehabilitation unit will be actively involved in the carrying out of project activities and project linkages will be adequate to ensure appropriate outreach and client referral;

(iii) Job development, placement, and achieving an optimal vocational adjustment will be primary project emphases;

(iv) All similar benefits for which project clients might be eligible will be utilized.

(h) *Innovativeness of approach* (5 Points).

(1) The Secretary reviews each application for information that shows

the extent to which the project approach is innovative.

(2) The Secretary looks for information that shows that the approach to be used in providing vocational rehabilitation services and other rehabilitation services will be innovative and appropriate to the groups of severely handicapped individuals being served.

(i) *Utilization of project findings* (5 Points).

(1) The Secretary reviews each application for information that shows the extent to which project findings might be utilized within the State rehabilitation service system.

(2) The Secretary looks for information that shows—

(i) The potential for project findings to be effectively utilized within the State vocational rehabilitation service system; and

(ii) The likelihood of the project activities being successfully replicated in other locations;

(j) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 373.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the costs of the construction of a rehabilitation facility are also allowed under this program.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.42 What special conditions apply under this program to projects that involve construction?

(a) Any construction of a rehabilitation facility undertaken under this program is subject to the requirements affecting construction under 34 CFR Part 369 and to any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(b) The acquisition, expansion, remodeling, alteration or renovation of an existing building in connection with a special project or demonstration may not be undertaken unless it has been demonstrated to be essential to expanding or otherwise improving rehabilitation services to handicapped individuals within the related special project or demonstration.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?
374.2 Who is eligible for assistance under this program?
374.3 What regulations apply to this program?
374.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

374.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sec.
374.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

374.40 What are the matching requirements?
374.41 What are allowable costs?
374.42 What are the special requirements affecting the scheduling of recreational activities within a project?
374.43 What are the special requirements affecting the renovation or construction of facilities?

AUTHORITY: Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3), unless otherwise noted.

SOURCE: 46 FR 5429, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?

This program is designed to operate programs and, where appropriate, to renovate and construct facilities to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.2 Who is eligible for assistance under this program?

State and public and other nonprofit agencies and organizations are eligible for assistance under this program.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 734.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(31))

§ 374.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 771(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 374.10 What types of projects are authorized under this program?

(a) This program provides financial assistance for the support of the special projects and demonstrations, and related research and evaluation concerned with operating programs to demonstrate methods of making recreation activities fully accessible to handicapped individuals, including the renovation and construction of facilities where appropriate.

(b) Activities carried out under this program must focus on as broad a range of recreation activities as is appropriate to the geographical area, including indoor and outdoor recreation activities; competitive, active, and quiet recreation activities; social activities; and recreation activities related to the fine arts. These activities may include but are not limited to, arts, camping, dance, drama, fitness, 4-H, scouting, sports, swimming, travel and other related recreation activities;

(c) Projects must demonstrate innovative ways in which recreation services and activities can be made fully accessible to handicapped individuals, with special emphasis on those who are the most severely handicapped;

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 374.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation service program* (10 Points). The Secretary reviews each application for information that shows—

(1) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(2) Recreation services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation service program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The numbers of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreation activities expected to be available;

(iv) The extent to which the full range of resources at the facility will be accessible and can be expected to be utilized by handicapped individuals in the service area; and

(v) The extent to which there is evidence of support for the project from community agencies with an interest in recreational activities for handicapped individuals.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 374.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.41 What are allowable costs?

In addition to those allowable costs estabilished in EDGAR §§ 75.530–75.534, the following costs are also allowable in the case of any project which involves the renovation or construction of a facility:

(a) Acquisition of land in connection with construction of a rehabilitation facility;

(b) Acquisition of existing buildings;

(c) Remodeling, alteration, renovation, or expansion of existing buildings;

(d) Construction of new buildings;

(e) Architect's services;

(f) Site survey and soil investigation;

(g) Fixed or movable equipment;

(h) Works of art in an amount not to exceed one percent of the total cost of the project; and

(i) Other activities specifically provided for in the application.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.43 What are the special requirements affecting the renovation or construction of facilities?

(a) To the greatest extent possible, existing facilities for the provision of recreational activities are expected to be utilized so that the need for the renovation or construction of facilities can be avoided.

(b) When renovation or construction of a facility is demonstrated to be necessary under this program, it must conform with the requirements specified under Part 369 and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c) and 311(a) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

PART 375—HANDICAPPED MIGRATORY AGRICULTURAL AND SEASONAL FARMWORKER VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.
375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?
375.2 Who is eligible for assistance under this program?
375.3 What regulations apply to this program?
375.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

375.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

375.30 What selection criteria does the Secretary use under this program?
375.40 What are the matching requirements?
375.41 What are allowable costs?
375.42 What are the special requirements affecting coordination with related programs?

AUTHORITY: Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b, unless otherwise noted.

SOURCE: 46 FR 5430, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 375.1 What Is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?

This program is designed to provide financial assistance to projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

(Section 321 of the Act; 29 U.S.C. 777b)

§ 375.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

(b) A State agency may, if it chooses, enter into an agreement with the State vocational rehabilitation agencies of one or more other States to develop a cooperative program for the provision of vocational rehabilitation services under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

§ 375.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 Part 369;

(b) The regulations in this Part 375.

(Section 312 of the Act; 29 U.S.C. 777b)

§ 375.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program—

(1) "Family members" or "members of the family" means any relative by blood or marriage of a handicapped migratory agricultural worker or seasonal farmworker and other individuals living in the same household with

whom the handicapped migratory agricultural worker or the seasonal farmworker has a close interpersonal relationship, and who are with the worker, or have accompanied the worker on his migratory tour to the point in time at which the State agency comes into contact with him.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(2) "Migratory agricultural worker" means a person who occasionally or habitually leaves his place of residence on a seasonal or other temporary basis to engage in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market in another locality in which he resides during the period of such employment.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(3) "Seasonal farmworker" means a person who on a seasonal or other temporary basis engages in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market within daily commuting distance from his place of normal residence.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 375.10 What activities are eligible for assistance?

Project activities include the development and implementation of special arrangements for providing vocational rehabilitation services to handicapped individuals who are migratory agricultural workers or seasonal farmworkers and to members of their families (whether or not handicapped) who are with them, where these services are necessary to the vocational rehabilitation of the handicapped migratory agricultural worker or seasonal farmworker.

(Sec. 312 of the Act; 29 U.S.C. 777b)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 375.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Liaison with the State vocational rehabilitation service program* (15 Points).

(1) The Secretary reviews each application for information that shows the adequacy of the liaison with the State vocational rehabilitation service program.

(2) The Secretary looks for information that shows project linkages with the State vocational rehabilitation agency and community agencies adequate to ensure client referrals, outreach and utilization of project results.

(g) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the State or local

agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the following items are allowable under this program—

(a) Staff training necessary to improve the capacity of the State or local agency to serve handicapped migratory agricultural workers or seasonal farmworkers and members of their families when the training is included within a program of services; and

(b) Maintenance payments which must be provided at rates consistent with rates paid to handicapped individuals under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.42 What are the special requirements affecting coordination with related programs?

Each project must be administered in close cooperation with other public and nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families, including programs authorized under Title I of the Elementary and Secondary Education Act of 1964, the Migrant Health Act and the Farm Labor Contractor Registration Act of 1963.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

PART 378—PROJECTS FOR INITIATING SPECIAL RECREATION PROGRAMS FOR HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.
378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?
378.2 Who is eligible for assistance under this program?
378.3 What regulations apply to this program?
378.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

378.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

378.30 [Reserved]
378.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

378.40 What are the matching requirements?
378.41 [Reserved]
378.42 What are the special requirements affecting the scheduling of recreational activities within a project?
378.43 What are the special requirements affecting coordination with related programs?

AUTHORITY: Sections 12(c) and 316 of the Act; (29 U.S.C. 711(c) and 777(f)), unless otherwise noted.

SOURCE: 46 FR 5431, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?

This program is designed to initiate special programs to provide handicapped individuals with recreational activities which can be expected to aid in their mobility and socialization.

(Section 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for assistance under this program?

Applications may be made by State and public and other nonprofit agencies and organizations.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 378.

(Section 316 of the Act; 29 U.S.C. 777(f))

§ 378.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 777(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 378.10 What types of projects are authorized under this program?

(a) This program supports projects which initiate programs of recreational services for handicapped individuals.

(b) Activities carried out under this program must include as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities; competitive, active, and quiet recreational activities; social activities; and recreational activities related to the fine arts. These activities may include, but are not limited to, arts, camping, dance, drama, 4-H, fitness, scouting, sports, swimming, travel and related recreational activities designed—

(1) To promote personal satisfaction;

(2) To provide equal recreational opportunity;

(3) To provide normalization experiences;

(4) To foster social interaction and physical and mental health; and

(5) To provide individualized rehabilitation and therapeutic activities to alleviate the effects of disabilities.

(Section 316 of the Act; 29 U.S.C. 777(f))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 378.30 [Reserved]

§ 378.31 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation services program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation services program.

(2) The Secretary looks for information that shows—

(i) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(ii) Recreational services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation services program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The number of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreational activities expected to be available; and

(iv) The extent to which the full range of resources can be expected to be utilized by the handicapped individuals in the service area.

(h) *Likelihood of sustaining the service program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant intends to continue to operate the recreational activities after the termination of the project.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 378.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total project costs.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c))

§ 378.41 [Reserved]

§ 378.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Section 316 of the Act; 29 U.S.C. 777f)

§ 378.43 What are the special requirements affecting coordination with related programs?

To the greatest extent possible, existing facilities and resources must be used to provide the recreational activities. The grantee must also utilize existing community recreation programs or service resources available under any related programs in the geographical area which are supported or authorized under the Developmental Disabilities Assistance and Bill of Rights Act, The Education for All Handicapped Children Act, the National Endowment of the Arts and Humanities Act of 1965, Title XX of the Social Security Act, the Community Education Act, and the Historic Preservation Fund and Land and Water Conservation Fund.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.
379.1 What is the projects with industry program?
379.2 Who is eligible for assistance under this program?
379.3 What regulations apply to this program?
379.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 How does the Secretary enter into an agreement?

Subpart E—What Conditions Must Be Met by a Grantee?

Sec.
379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What prior assurances are required for agreements?
379.43 What general provisions are required in agreements?
379.44 What wage rates are required under agreements?
379.45 What on-the-job training is required?

AUTHORITY: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 759g.

SOURCE: 46 FR 5432, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 379.1 What is the projects with industry program?

This program is designed to provide handicapped individuals with training, employment, and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and permit them to maintain their employment.

(Section 621(a) of the Act; 29 U.S.C. 759g(a))

§ 379.2 Who is eligible for assistance under this program?

Employers and profit making and nonprofit organizations with whom the Secretary may enter into an agreement include any industrial, business or commercial enterprise; labor organization; employer, industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting.

§ 379.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 369; and

(b) The regulations in this Part 379.

(Section 621 of the Act; 29 U.S.C. 795g)

§ 379.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c)).

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of projects are authorized under this program?

The Projects with Industry program provides financial assistance for the following types of activities:

(a) Providing handicapped individuals with training and employment in a realistic work setting in order to prepare them for employment in the competitive market, including a planned and systematic sequence of training and instruction in occupational and employment skills, and providing reasonable assurance of gainful employment at the successful termination of the training and instruction;

(b) Providing handicapped individuals with supportive services that are necessary to permit them to continue to engage in the employment or a related type of employment for which they have received training under this program; and

(c) To the extent appropriate, expanding job opportunities for handicapped individuals by analyzing job demands and capabilities of the handicapped individuals and providing for:

(1) The development and modification of jobs to accommodate the special needs of the handicapped individuals being trained and employed under this program;

(2) The purchase and distribution of special aids, appliances, or equipment adapted to the needs of a handicapped individual for use at a jobsite;

(3) The modification of any facilities or equipment of the employer which are to be used by handicapped individuals under this program; and

(4) The establishment of appropriate job placement services.

(Section 621(a) of the Act; 29 U.S.C. 795g)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Achievement of competitive employment objectives* (35 Points). (1) The Secretary reviews each application for information that shows that competitive employment objectives will be achieved for handicapped individuals being served under a project.

(2) The Secretary looks for information that shows that—

(i) The project has the capacity for placing a substantial number of handicapped individuals in competitive employment on a cost-effective basis;

(ii) Handicapped individuals will be trained in occupations for which there is a realistic demand in the competitive labor market and, where appropriate, adequate consideration is given to labor union requirements in the development of training programs; and

(iii) The project has the capacity for creating jobs which offer career development and advancement opportunities for handicapped individuals.

(g) *Coordination with service agencies* (20 Points).

(1) The Secretary reviews each application for information that shows an adequate level of coordination with appropriate service agencies in the community.

(2) The Secretary looks for information that shows—

(i) Coordination of project activities with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of similar benefits; and

(ii) Establishment of linkages with business, industry, trade associations, labor unions, and other concerned organizations, as demonstrated by the establishment of an advisory committee with representation from these groups to share in policy and decision-making functions.

(h) *Innovativeness of approach* (10 Points).

(1) The Secretary reviews each application for information that shows an innovativeness of approach in preparing handicapped individuals for competitive employment.

(2) The Secretary looks for information that shows creativity and an innovative approach in the methodology for achieving project objectives.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 How does the Secretary enter into an agreement?

The Secretary enters into an agreement in consultation with the Secretary of Labor and the Secretary of Commerce and with the State vocational rehabilitation unit in the State in which the project is to be carried out, except where the scope of the proposed project extends beyond a single State.

(Section 621 of the Act; 29 U.S.C. 795g)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80% of the total cost of a project under this program.

(Section 621(c) of the Act; 29 U.S.C. 795g(c))

§ 379.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the following items are allowable costs under this program:

(a) The costs of job training and related vocational rehabilitation services and supportive rehabilitation services;

(b) Instruction and supervision of trainees;

(c) Training materials and supplies, including consumable materials;

(d) Instructional aids;

(e) Bonding fees, liability and insurance premiums;

(f) The purchase or modification of equipment or facilities adapted for the use of handicapped individuals and special aids and appliances; and

(g) Alteration and renovation appropriate and necessary to ensure access to and utilization of buildings by handicapped persons.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.42 What prior assurances are required for agreements?

Before entering into an agreement under this program, the Secretary consults with the prospective employer or other entity sponsoring the project, and, to the extent possible, with the State vocational rehabilitation unit and the handicapped individuals to be trained and employed under the project. On the basis of this consultation, it must be determined that:

(a) The State vocational rehabilitation unit will, to the maximum extent practicable, maintain a continuing relationship with the handicapped individuals to be served in the project and will either provide necessary vocational rehabilitation services and related supportive services directly or will otherwise ensure their availability;

(b) The bargaining agent under any applicable collective bargaining agreement concurs with the project;

(c) The trainee wage rates will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a comparable character; and

(d) No abnormal labor condition such as a strike, a lockout, or other similar condition exists with respect to the applicant.

§ 379.43 What general provisions are required in agreements?

Any agreement entered into must, in addition to standard provisions—

(a) Provide for adherence to the terms or conditions of employment prescribed by any applicable Federal, State, or local law;

(b) Provide that a determination by competent authority of failure to adhere to the terms or conditions required by paragraph (a) of this section will constitute cause for termination of the contract or agreement;

(c) Provide that the Federal share of the costs will cover only a part of the total costs of the project;

(d) Provide that the recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any handicapped individual receiving training or employment, will be without regard to race, sex, color, creed, age, or national origin, and that violation will constitute grounds for termination of the contract or arrangement and that the United States will have a right to seek judicial enforcement of this provision;

(e) Provide that trainees will be compensated for hours spent in production of any goods or services;

(f) Provide that those individuals to receive training or employment services under the contract or arrangement will be individuals determined by the appropriate State vocational rehabilitation unit to be handicapped individuals suitable for these services;

(g) Provide reasonable assurance that handicapped individuals successfully completing the training program will be employed by the employer or within a similar enterprise;

(h) Specify the duration of the project.

(i) Provide that when funds are given directly to an employer, the Secretary, together with the State vocational rehabilitation unit, has the right to review any termination of employment. In the event that that termination occurs less than three years after the handicapped individual began his or her employment, the Secretary is entitled to require the repayment of a portion of the funds made available to the employer, if the Secretary in consultation with the State unit determines that there was not a reasonable cause for the termination;

(j) Provide that any handicapped individual placed with an employer under this program will be given terms and benefits of employment equal to those which are given other employees of the employer;

(k) Provide that handicapped employees will not be unreasonably segregated from other employees; and

(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.44 What wage rates are required under agreements?

(a) The agreement must include the rate of compensation to be paid to trainees engaged in the production of any goods or services. The wage rate paid a trainee must be the higher of the following:

(1) The minimum entrance rate for inexperienced workers in the same occupation, or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or

(2) The minimum rate required under the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act, to the extent that these Acts are applicable to the trainee.

(b) The agreement must further provide for an increasing rate of payment to trainees if the training program is of such duration that periodic increases are reasonable and if the proficiency of the trainee merits the increases.

(Sections 12(c) and 621b; 29 U.S.C. 711(c) and 795g)

§ 379.45 What on-the-job training is required?

The agreement must—

(a) Provide for methods of instruction, progression of trainees, and size of the training group, including individualized or group training, comparable in duration to other training programs for the particular occupation, and adequate in content to qualify trainees for employment;

(b) Provide adequate and safe facilities and equipment; and

(c) Require that suitable records of attendance, performance and progress of trainees be maintained and that these records be made available to the Secretary when requested.

(Section 621 of the Act; 29 U.S.C. 795g)

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec.
385.1 What is the Rehabilitation Training Program?
385.2 Who is eligible for assistance under these programs?
385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For a Grant?

385.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
385.31 How does the Secretary evaluate an application?
385.32 What general selection criteria does the Secretary use in reviewing an application?
385.33 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

385.40 What are the requirements pertaining to the membership of a project advisory committee?
385.41 What are the requirements affecting the collection of data from State agencies?

Sec.
385.42 What are the requirements affecting the dissemination of training materials?

AUTHORITY: Secs. 12(c), 304 and 306, Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c), 744 and 776), unless otherwise noted.

SOURCE: 45 FR 86379, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training Program?

(a) The Rehabilitation Training Program is designed to—

(1) Increase the supply of personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicaps, and

(2) Maintain and upgrade basic skills and knowledge of personnel employed as providers of vocational, medical, social or psychological rehabilitation services.

(b) The Secretary awards financial assistance through five categories of training programs—

(1) Rehabilitation Long-Term Training (Part 386);

(2) Experimental and Innovative Training (Part 387);

(3) State Vocational Rehabilitation Unit In-Service Training (Part 388);

(4) Rehabilitation Continuing Education Programs (Part 389); and

(5) Rehabilitation Short-Term Training (Part 390).

(Section 304 of the Act; 29 U.S.C. 774)

§ 385.2 Who is eligible for assistance under these programs?

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Training Program.

(Section 304 of the Act: 29 U.S.C. 774)

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training Program—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs);

(b) The regulations in EDGAR, 34 CFR Part 77 (General);

(c) The regulations in this Part 385; and

(d) The regulations in Parts 386, 387, 388, 389, and 390, as appropriate.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

§ 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under the Rehabilitation Training Program—

"Applicant"
"Application"
"Award"
"Budget Period"
"Department"
"EDGAR"
"Nonprofit"
"Private"
"Project"
"Project Period"
"Public"
"Secretary"

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program—

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Handicapped individual" means an individual—

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an ex-

tended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Independent living rehabilitation services" or "independent living services means."

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation services, and including appropriate accommodations to, and modifications of any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services;

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of preschool age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual.

(Section 702(b) of the Act; 29 U.S.C. 796(b))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(a)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Physical and mental restoration services means—

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a pyschologist licensed or certified in accordance with State laws and regulations;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(10) Podiatry;

(11) Physical therapy;

(12) Speech or hearing therapy;

(13) Psychological services;

(14) Therapeutic recreation services;

(15) Medical or medically related social work services;

(16) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(17) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(18) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State unit" or "State vocational rehabilitation unit" means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(3))

"Stipend" means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Vocational rehabilitation services" means—

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services; necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(5) Maintenance;

(6) Transportation;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 385.20 What are the application procedures for these programs?

The Secretary gives the State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155-75.159.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 385.32 and specific selection criteria identified in Parts 386, 387, 388, 389 and 390. The maximum possible score for each complete criterion under each category of training is stated in parentheses in § 386.31, § 387.31, § 388.31, § 389.31, and § 390.31. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.32 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

§ 385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 385.32 and Parts 386 through 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

When a project funded under Parts 386 through 390 establishes an advisory committee, its membership must include handicapped persons or other representatives of handicapped individuals, trainees, and providers of vocational rehabilitation and independent living rehabilitation services.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.41 What are the requirements affecting the collection of data from State agencies?

When the collection of data is necessary from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training Program?
386.2 Who is eligible for assistance under this program?
386.3 What regulations apply to this program?

Sec.
386.4 What definitions apply to this program?

Supart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

386.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

386.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

386.40 What are the matching requirements?
386.41 What are allowable costs?
386.42 What are the special requirements affecting the awarding of traineeships?

AUTHORITY: Secs. 12(c) and 304, Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86381, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide a balanced program of academic and non-academic training activities in the fields of—

(a) Rehabilitation medicine;
(b) Rehabilitation nursing;
(c) Rehabilitation counseling;
(d) Rehabilitation social work;
(e) Rehabilitation psychiatry;
(f) Rehabilitation psychology;
(g) Physical therapy;
(h) Occupational therapy;
(i) Speech-language pathology and audiology;
(j) Rehabilitation facility administration;
(k) Vocational evaluation and work adjustment;
(l) Prosthetics and orthotic;
(m) Rehabilitation of the blind;
(n) Rehabilitation of the deaf;
(o) Rehabilitation of the mentally ill;
(p) Rehabilitation job placement and job development;
(q) Therapeutic recreation;
(r) Undergraduate education in the rehabilitation services;
(s) Rehabilitation administration;
(t) Rehabilitation dentistry; and
(u) Other fields that contribute to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and individuals with limited English-speaking ability.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

§ 386.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 386.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 386.

(Section 304 of the Act; 29 U.S.C. 774)

§ 386.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 386.10 What types of projects are authorized under this program?

The Rehabilitation Long-Term Training Program provides financial assistance for—

(a) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in § 386.1.

(b) Projects that provide a number of interrelated training activities designed to improve the professional competence of employed rehabilitation workers in one of those fields of study indentified in § 386.1 but not directly related to the awarding of an academic degree.

(c) Projects that provide undergraduate medical students an orientation to the concepts and techniques of rehabilitation medicine.

(d) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 386.30 What selection criteria are used under this program?

(a) *Plan of operation.* (30 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the baisis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower supply and demand and includes an assessment of the potential of existing programs within the geographical area to meet the employment needs in the specific rehabilitation field for which grant support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of physically or mentally handicapped individuals, or to maintain and improve the skills and quality of professional personnel in the rehabilitation fieled in which the training is to be provided.

(h) *Nature and scope of curriculum.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped;

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services; and

(v) There is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 386.40 What are the matching requirements?

(a) A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary.

The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(b) The grantee is expected to furnish as large a part of the total project cost as possible. In the case of academic training projects with a multiyear project period, the grantee's share of the teaching costs is expected to increase progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period.

(Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.562, the following items are allowable under long-term training projects.

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.42 What are the special requirements affecting the awarding of traineeships?

(a) A candidate for a rehabilitation traineeship must—

(1) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(2) Take the training at the educational institution or agency designated in the traineeship award;

(3) Not be an employee of the Federal government;

(4) Not concurrently receiving educational allowances from any other Federal, State or local public or voluntary agency when that allowance is conditioned on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances or benefits payable under Chapters 34, 35 and 36 of Title 38, U.S.C. as limited by Section 213 of the Veterans Educational and Training Amendments Act of 1972, or educational allowances or benefits payable under any State or local program;

(5) Be enrolled for non-academic study in the grantee institution;

(6) Express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabiliation of physically or mentally handicapped persons, especially those with the most severe handicaps; and

(7) Indicate an expectation to seek employment in a State vocational rehabilitation agency or in another rehabilitation agency or facility from which the State agency secures services.

(b) No training or instruction may be provided to an individual for any one course of study extending for a period in excess of four years.

(Sections 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774 (b))

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

Sec.

387.1 What is the Experimental and Innovative Training Program?

387.2 Who is eligible for assistance under this program?

387.3 What regulations apply to this program?

387.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

387.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?

387.41 What are the allowable costs?

AUTHORITY: Sections 12(c) and 304 of the Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86383, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of rehabilitation personnel, and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely handicapped persons; and

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

(Section 304 of the Act; 29 U.S.C. 774)

§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 387.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 387.

(Section 304 of the Act; 29 U.S.C. 774)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 387.10 What types of projects are authorized under this program?

The Experimental and Innovative Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation workers may be demonstrated.

(Section 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What selection criteria are used under this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that—

(i) The proposed project represents an experimental or innovative approach to the training of rehabilitation workers and provides for the training of new types of rehabilitation workers or the development of innovative training methodologies; and

(ii) The need for the training program has been justified and includes an assessment of the potential of existing training programs of a traditional nature to meet the personnel needs in the rehabilitation field for which support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of physically or mentally handicapped individuals or maintain and improve the skills and quality of rehabilitation workers.

(h) *Nature and scope of curriculum.* (10 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Section 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 387.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under experimental and innovative training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.
388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?
388.2 Who is eligible for assistance under this program?
388.3 What regulations apply to this program?
388.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

388.10 What types of projects are authorized under this program?
388.11 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

388.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

388.40 What are the matching requirements?
388.41 What are the allowable costs?

AUTHORITY: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86384, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?

This program is designed to support special projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas which will enable staff personnel to improve their ability to provide vocational rehabilitation services to severely handicapped individuals.

(Section 304 of the Act; 29 U.S.C. 774)

§ 388.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Section 304(a) of the Act; 29 U.S.C. 744(a))

§ 388.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 388.

(Section 304 of the Act; 29 U.S.C. 744)

§ 388.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 388.10 What types of projects are authorized under this program?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to assure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for handicapped individuals, especially those with the most severe handicaps.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

§ 388.11 What specific activities may be supported under this program?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation, or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program.

(b) Training methods may include—

(1) The development of State unit training institutes concerned with special aspects of State unit administration or service provision;

(2) Attendance for individual employees or groups of employees at special courses conducted in cooperation with an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice; and

(4) Maintenance of agency instructional library resources for books, films, tapes and other resources.

(Section 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 388.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The State unit has conducted a needs assessment of the in-service training needs of State unit employees; and

(ii) The State unit in-service training plan responds to needs identified on the basis of the training needs assessment.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project can be expected to improve the competence of State vocational rehabilitation unit personnel in providing vocational rehabilitation services to handicapped individuals or in otherwise contributing to the more effective management of the State unit program.

(h) *Nature and scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The program primarily includes an integrated sequence of—

(A) Workshops, seminars, and other special courses for counselors and other classes of State unit personnel concerned with State unit procedures;

(B) Concentrated training activities focusing on improving State unit staff skills in working with specific groups of severely handicapped persons; and

(C) Directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(Section 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 388.40 What are the matching requirements?

The Secretary may make grants for paying part of the costs of projects under this program. The grantee must provide at least 10 percent of the total costs of the project.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

§ 388.41 What are the allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.562, the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course; and

(c) Trainee tuition and fees.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

Subpart A—General

Sec.

389.1 What is the Rehabilitation Continuing Education Program?
389.2 Who is eligible for assistance under this program?
389.3 What regulations apply to this program?
389.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

389.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sec.
389.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

389.40 What are the matching requirements?
389.41 What are allowable costs?

AUTHORITY: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86385, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 389.1 What is the Rehabilitation Continuing Education Program?

This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

(Section 304 of the Act; 29 U.S.C. 774)

§ 389.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 389.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 389.

(Section 304 of the Act; 29 U.S.C. 774)

§ 389.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

(a) Train newly employed State agency staff at the administrative, supervisory, professional, subprofessional, or clerical levels in order to develop needs skills for effective agency performance;

(b) Provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues, priorities and legislative thrusts of the State/Federal vocational rehabilitation program; and

(c) Develop and conduct training programs for staff of private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 389.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the Rehabilitation Continuing Education Program has been adequately justified.

(2) The Secretary looks for information that shows the need for the training program has been justified and includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that the proposed project can be expected to improve the competence of professional and other personnel employed in the rehabilitation agencies serving severely physically and mentally disabled individuals.

(h) *Nature and scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives of the training project.

(ii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(iii) The program includes a broad intergrated sequence of training activities for employed rehabilitation workers.

(iv) The program primarily includes coursework which can be expected to be needed on a recurrent basis throughout the multi-State geographical area to be served.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 389.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530-75.562, the following items are allowable under Rehabilitation Continuing Education programs--

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course;

(c) Trainee tuition and fees; and

(d) Special accommodations for handicapped trainees.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.

390.1 What is the Rehabilitation Short-Term Training Program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sec.
390.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

AUTHORITY: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86386, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training Program?

This program is designed for the support of special seminars, institutes, workshops and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

(Sections 21(a)(2) and 304(a) of the Act; 29 U.S.C. 711(a)(2) and 774(a))

§ 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 390.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 390.

(Section 304 of the Act; 29 U.S.C. 774)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Section 12(a)(2) and 304 of the Act; 29 U.S.C. 711(a)(2) and 774)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 390.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows the need for the train-

ing project that has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project relates to the mission of the State/Federal rehabilitation service program and can be expected to improve the skills and competence of personnel engaged in the administration or delivery of rehabilitation services, and others with an interest in the delivery of rehabilitation services.

(h) *Nature and scope of training program content.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application for information that shows that—

(i) The educational objectives are clearly defined, measurable and achievable; and

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530-75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for handicapped trainees.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

Subpart A—Definitions

Sec.
395.1 Terms.

Subpart B—The State Licensing Agency

395.2 Application for designation as a State licensing agency; general.
395.3 Application for designation as State licensing agency; content.
395.4 State rules and regulations.
395.5 Approval of application for designation a State licensing agency.
395.6 Vendor ownership of vending facilities.
395.7 The issuance and conditions of licenses.
395.8 Distribution and use of income from vending machines on Federal property.
395.9 The setting aside of funds by the State licensing agency.
395.10 The maintenance and replacement of vending facility equipment.
395.11 Training program for blind individuals.
395.12 Access to program and financial information.
395.13 Evidentiary hearings and arbitration of vendor complaints.
395.14 The State Committee of Blind Vendors.
395.15 Use of nominee agreements.
395.16 Permit for the establishment of vending facilities.
395.17 Suspension of designation as State licensing agency.

Subpart C—Federal Property Management

Sec.
395.30 The location and operation of vending facilities for blind vendors on Federal property.
395.31 Acquisition and occupation of Federal property.
395.32 Collection and distribution of vending machine income from vending machines on Federal property.
395.33 Operation of cafeterias by blind vendors.
395.34 Application for permits.
395.35 Terms for permit.
395.36 Enforcement procedures.
395.37 Arbitration of State licensing agency complaints.
395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

SOURCE: 42 FR 15802, Mar. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980, and further redesignated at 46 FR 5417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:

(a) "Act" means the Randolph-Sheppard Vending Stand Act (Pub. L. 74-732), as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C., ch. 6A, Sec 107.

(b) "Blind licensee" means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(c) "Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have

(1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

(d) "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) "Secretary" means the Secretary of the Rehabilitation Services Administration.

(f) "Direct competition" means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(h) "Individual location installation or facility" means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) "License" means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

(j) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) "Nominee" means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) "Normal working hours" means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) "Other property" means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) "Permit" means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) "Program" means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) "Satisfactory site" means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) "Secretary" means the Secretary of Education.

(s) "Set-aside funds" means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) "State vocational rehabilitation agency" means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) "State licensing agency" means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) "Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) "Vending machine", for the purpose of assigning vending machine income under this part, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(z) "Vending machine income" means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) "Vendor" means a blind licensee who is operating a vending facility on Federal or other property.

(bb) "Vocational rehabilitation services" means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under Part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nomi-

nee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements:

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

§ 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

(1) The State licensing agency; or

(2) Its nominee, subject to the conditions specified in § 395.15(b); or

(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State vocational rehabilitation agency under § 395.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§ 395.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under § 395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under § 395.13 to request the convening of an ad hoc arbitration panel.

§ 395.7 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;

(2) Citizens of the United States; and

(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

§ 395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

§ 395.9 The setting aside of funds by the State licensing agency.

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the Federal Register.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the Federal Register.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§ 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section, in which event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property *Provided* that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98-249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, "substantial alteration or renovation of a building" means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accure to the State licensing agency which shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: *Provided, however*, That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§ 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or serv-

ices as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semi-annually (January 1 and July 1).

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Table
Table 1—List of CFR Sections Affected Formerly Appearing in Title 34—Government Management
List of CFR Sections Affected

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1062

Material Approved for Incorporation by Reference

The Director of the Federal Register approves the following incorporations by reference for one year effective July 1, 1981, unless otherwise noted (5 U.S.C. 552(a) and 1 CFR Part 51). For more information on incorporation by reference, see the preliminary pages of this volume.

34 CFR, SUBTITLE B, CHAPTER II (PART 104)—OFFICE OF CIVIL RIGHTS, DEPARTMENT OF EDUCATION

	CFR Citation
American National Standards Institute, Inc. 1430 Broadway, New York, New York 10018	
ANSI A117.1-1961 American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped	104.23(c)

[46 FR 33980, June 30, 1981]

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Table of CFR Titles and Chapters

(As of June 19, 1981)

Title 1—General Provisions

Chap.	
I	Administrative Committee of the Federal Register (Parts 1-49)
II	Office of the Federal Register (Parts 50-299)
III	Administrative Conference of the United States (Parts 300-399)
IV	Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

	Proclamations
	Executive Orders
	Presidential Documents Other Than Proclamations and Executive Orders
I	Executive Office of the President (Parts 100-199)

Title 4—Accounts

I	General Accounting Office (Parts 1-99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III	General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 0-1199)
II	Merit Systems Protection Board (Parts 1200-1299)
III	Office of Management and Budget (Parts 1300-1399)
IV	Advisory Committee on Federal Pay (Parts 1400-1499)
V	The International Organizations Employees Loyalty Board (Parts 1500-1599)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX	Appalachian Regional Commission (Parts 1900-1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV	Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500-2599)

Title 6—Economic Stabilization

VI	Assistant Secretary for Administration, Department of the Treasury (Parts 600-699)
VII	Council on Wage and Price Stability (Parts 700-799)

Title 7—Agriculture

	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210-299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
V	Agricultural Research Service, Department of Agriculture (Parts 500-599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600-699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
XII	Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800-2099)

Title 7—Agriculture—Continued

Chap.	
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
XXVI	Office of the Inspector General, Department of Agriculture (Parts 2600-2699)
XXVIII	Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX	Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
II	Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)
III	Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0-199)
II	Department of Energy (Parts 200-699)
III	Department of Energy (Parts 700-999)
X	Department of Energy (General Provisions) (Parts 1000-1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1-199)
II	Federal Reserve System (Parts 200-299)
III	Federal Deposit Insurance Corporation (Parts 300-399)
IV	Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.	
V	Federal Home Loan Bank Board (Parts 500-599)
VI	Farm Credit Administration (Parts 600-699)
VII	National Credit Union Administration (Parts 700-799)
VIII	Federal Financing Bank (Parts 800-899)
XI	Federal Financial Institutions Examination Council (Parts 1100-1199)
XII	Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1-199)
III	Economic Development Administration, Department of Commerce (Parts 300-399)
IV	Chrysler Corporation Loan Guarantee Board (Parts 400-499)
V	Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1-199)
II	Civil Aeronautics Board (Parts 200-399)
V	National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

	SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 20-199)
II	National Bureau of Standards, Department of Commerce (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)
IV	Foreign-Trade Zones Board (Parts 400-499)
V	United States Metric Board (Parts 500-599)
VI	Bureau of Industrial Economics, Department of Commerce (Parts 600-699)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
XII	United States Travel Service, Department of Commerce (Parts 1300-1399)
XIII	East-West Foreign Trade Board (Parts 1300-1999)

Title 15—Commerce and Foreign Trade—Continued

Chap.	
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000-2099)
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0-999)
II	Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1-199)
II	Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
III	Delaware River Basin Commission (Parts 400-499)
IV	Office of Water Resources Research, Department of the Interior (Parts 500-599)
VI	Water Resources Council (Parts 700-799)
VIII	Susquehanna River Basin Commission (Parts 800-899)
XIII	Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1-199)
II	United States International Trade Commission (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
II	Railroad Retirement Board (Parts 200-399)
III	Social Security Administration, Department of Health and Human Services (Parts 400-499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
V	Employment and Training Administration, Department of Labor (Parts 600-699)
VI	Employment Standards Administration, Department of Labor (Parts 700-799)
VII	Benefits Review Board, Department of Labor (Parts 800-899)

Title 20—Employees' Benefits—Continued

Chap.	
VIII	Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I	Department of State (Parts 1-199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200-299)
III	Peace Corps (Parts 300-399)
IV	International Joint Commission, United States and Canada (Parts 400-499)
V	International Communication Agency (Parts 500-599)
VI	United States Arms Control and Disarmament Agency (Parts 600-699)
VII	Overseas Private Investment Corporation (Parts 700-799)
VIII	Employee-Management Relations Commission (Parts 800-899)
IX	Foreign Service Grievance Board (Parts 900-999)
X	Inter-American Foundation (Parts 1000-1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
XII	United States International Development Cooperation Agency (Parts 1200-1299)
XIII	Board for International Broadcasting (Parts 1300-1399)
XIV	Foreign Service Labor Relations Board;Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1-999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

	SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)
	SUBTITLE B—Regulations Relating to Housing and Urban Development
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)

Title 24—Housing and Urban Development—Continued

Chap	
II	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
IV	Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
VII	New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)
VIII	Low-Income Housing, Department of Housing and Urban Development (Parts 800-899)
IX	Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700-1799)
X	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
XV	Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
XX	Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Parts 3200-3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

I	Department of Justice (Parts 0-199)
III	Federal Prison Industries, Department of Justice (Parts 300-399)

Title 28—Judicial Administration—Continued

Chap.	
V	Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

	Subtitle A—Office of the Secretary of Labor (Parts 0-99)
	Subtitle B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100-199)
II	Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)
III	National Railroad Adjustment Board (Parts 300-399)
IV	Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)
V	Wage and Hour Division, Department of Labor (Parts 500-899)
IX	Construction Industry Collective Bargaining Commission (Parts 900-999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)
XX	Occupational Safety and Health Review Commission (Parts 2200-2499)
XXV	Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600-2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1-199)
II	Geological Survey, Department of the Interior (Parts 200-299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
VI	Bureau of Mines, Department of the Interior (Parts 600-699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

	Subtitle A—Office of the Secretary of the Treasury (Parts 0-50)
	Subtitle B—Regulations Relating to Money and Finance
I	Monetary Offices, Department of the Treasury (Parts 51-199)
II	Fiscal Service, Department of the Treasury (Parts 200-399)
IV	Secret Service, Department of the Treasury (Parts 400-499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)

Title 31—Money and Finance: Treasury—Continued

Chap.	
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1-499)
V	Department of the Army (Parts 500-699)
VI	Department of the Navy (Parts 700-799)
VII	Department of the Air Force (Parts 800-1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900-1999)
XX	Information Security Oversight Office (Parts 2000-2099)
XXI	National Security Council (Parts 2100-2199)
XXIV	Office of Science and Technology Policy (Parts 2400-2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700-2799)
XXVIII	Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Corps of Engineers, Department of the Army (Parts 200-399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100-199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400-499)
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
VI	Office of Postsecondary Education, Department of Education (Parts 600-699)

Title 34—Education—Continued

Chap.	
VII	Office of Educational Research and Improvement, Department of Education (Parts 700-799)
VIII	Office of Education for Overseas Dependents, Department of Education (Parts 800-899)

Title 35—Panama Canal

I	Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1-199)
II	Forest Service, Department of Agriculture (Parts 200-299)
III	Corps of Engineers, Department of the Army (Parts 300-399)
IV	American Battle Monuments Commission (Parts 400-499)
V	Smithsonian Institution (Parts 500-599)
VII	Library of Congress (Parts 700-799)
VIII	Advisory Council on Historic Preservation (Parts 800-899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
X	Commission of Fine Arts (Parts 1000-1099)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)
XII	Heritage Conservation and Recreation Service, Department of the Interior (Parts 1200-1299)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1-199)
II	Copyright Office, Library of Congress (Parts 200-299)
III	Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

I	Veterans Administration (Parts 0-99)

Title 39—Postal Service

I	United States Postal Service (Parts 1-999)
III	Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I	Environmental Protection Agency (Parts 1-799)
IV	Low-Emission Vehicle Certification Board (Parts 1400-1499)
V	Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

Chap.	SUBTITLE A—Federal Procurement Regulations System
1	Federal Procurement Regulations (Parts 1-1—1-99)
3	Department of Health and Human Services (Parts 3-1—3-99)
4	Department of Agriculture (Parts 4-1—4-99)
5	General Services Administration (Part 5-1—5-99)
5A	Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99)
5B	Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-99)
6	Department of State (Parts 6-1—6-99)
7	Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99)
8	Veterans Administration (Parts 8-1—8-99)
9	Department of Energy (Parts 9-1—9-99)
10	Department of the Treasury (Parts 10-1—10-99)
12	Department of Transportation (Parts 12-1—12-99)
13	Department of Commerce (Parts 13-1—13-99)
14	Department of the Interior (Parts 14-1—14-99)
14H	Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99)
14R	Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99)
15	Environmental Protection Agency (Parts 15-1—15-99)
18	National Aeronautics and Space Administration (Parts 18-1—18-99)
19	International Communication Agency (Parts 19-1—19-99)
20	Nuclear Regulatory Commission (Parts 20-1—20-99)
22	Community Services Administration (Parts 22-1—22-99)
23	United States Arms Control and Disarmament Agency (Parts 23-1—23-99)
24	Department of Housing and Urban Development (Parts 24-1—24-99)
25	National Science Foundation (Parts 25-1—25-99)
28	Department of Justice (Parts 28-1—28-99)
29	Department of Labor (Parts 29-1—29-99)
34	Department of Education (Parts 34-1—34-99)
44	Federal Emergency Management Agency (Parts 44-1—44-99)
	SUBTITLE B—Other Provisions Relating to Public Contracts
50	Public Contracts, Department of Labor (Parts 50-201—50-99)
51	Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-99)

Title 41—Public Contracts and Property Management—Continued

Chap.	
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1-199)
III	Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Water and Power Resources Service, Department of the Interior (Parts 200-499)
II	Bureau of Land Management, Department of the Interior (Parts 1600-9999)

Title 44—Emergency Management and Assistance

I	Federal Emergency Management Agency (Parts 0-399)
IV	Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

	SUBTITLE A—Department of Health and Human Services (Parts 1-99)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
IV	Office of Refugee Resettlement, Department of Health and Human Services (Parts 400-499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
VI	National Science Foundation (Parts 600-699)

Title 45—Public Welfare—Continued

Chap.	
VII	Commission on Civil Rights (Parts 700-799)
VIII	Office of Personnel Management (Parts 800-899)
X	Community Services Administration (Parts 1000-1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100-1199)
XII	ACTION (Parts 1200-1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
XVI	Legal Services Corporation (Parts 1600-1699)
XVII	National Commission on Libraries and Information Science (Parts 1700-1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800-1899)
XIX	National Commission on the Observance of International Women's Year (Parts 1900-1999)
XXI	Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Maritime Administration, Department of Commerce (Parts 200-399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
IV	Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0-199)
II	Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

	SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100-199)
II	Federal Railroad Administration, Department of Transportation (Parts 200-299)
III	Federal Highway Administration, Department of Transportation (Parts 300-399)
IV	Coast Guard, Department of Transportation (Parts 400-499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)

Title 49—Transportation—Continued

Chap.	
VIII	National Transportation Safety Board (Parts 800-899)
IX	United States Railway Association (Parts 900-999)
X	Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

I	United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
V	Marine Mammal Commission (Parts 500-599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of June 19, 1981)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Inspector General, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII

Agency	CFR Title, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
Maritime Administration	46, II
National Bureau of Standards	15, II
National Defense	44, IV
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII

Agency	CFR Title, Subtitle or Chapter
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Procurement Regulations System	41, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22,XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A

Agency	CFR Title, Subtitle or Chapter
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement Office	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III
Health Care Financing Administration	42, IV
Heritage Conservation and Recreation Service	36, XII
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X

Agency	CFR Title, Subtitle or Chapter
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Heritage Conservation and Recreation Service	36, XII
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water and Power Resources Service	43, I
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV

Agency	CFR Title, Subtitle or Chapter
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV

Agency	CFR Title, Subtitle or Chapter
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Refugee Resettlement Office	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Federal Procurement Regulations System	41, 6
Statistical Reporting Service, Agriculture Department	7, XII
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II

Agency	CFR Title, Subtitle or Chapter
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water and Power Resources Service	43, I
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Table

NOTE 1: The Department of Education Organization Act (Pub. L. 96-88) established the Department of Education (ED) as a new executive department.

On May 9, 1980 (45 FR 30802), the following parts were added to Title 34:

(a) Subtitle A consists of Parts 4, 5, 5b, 6, 7, 8, 10, 11, 12, 15, 17, 30, 35, 50, 63, 64, 67, 73, 74, and 79.

(b) Chapter I consists of Parts 100, 101, 104, and 106.

On November 21, 1980 (45 FR 77368), various parts appearing in Title 24, Chapter II, and Title 45, Chapters I, XIII, XIV, and XV, were transferred into Title 34 and redesignated. The following table shows the old part numbers as they appear in Title 24 and 45 and the new part numbers as they appear in Title 34.

45 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter I	
100a	75
100b	76
100c	77
100d	78
101	621
104	400
105.1-105.507	408
105.601-105.607	525
105.611-106.617	526
105.621-105.627	527
111	218
112	219
113	220
114	221
115	222
116	200
116a	201
116b	302
116c	203
116d	204
119	208
120	208
121a	300
121b	305
121c	307
121d	309
121e	315
121f	318
121g	320
121h	324
121k	336
121m	301
121o	330
121p	331
121q	332
121r	333
122a	537
123	500
123a	501
123b	502
123c	503
123d	504
123e	510
123f	514
123g	520
123h	515
123i	505
130	770
131	773
132	776
133	777
134	774
136	776
137	606
146	655
146a	667
147	Removed
148	662
149	603
150	639
151	790
153	Removed
154	644
155	645
157	646
158	215
159	643
160f	745
161	295
161a	296
161b	752
161c	753
161e	755
161f	419
161g	757
161h	758
161l	647
161m	763
162	765
162a	766
162b	767
162c	768
163	440
163a	441

Title 34—Government Management

45 CFR Old Part Numbers	34 CFR New Part Numbers
163b	442
163c	443
163d	444
164	726
166	425
166a	426
166b	431
166c	432
168	668
169	624
170	617
172	793
173	610
174	674
175	675
176	676
177	682
178	686
178a	695
179	648
180	270
182	631
182a	740
184	769
185	280
186	250
186a	251
186b	252
186c	253
186d	254
186e	255
186f	256
186g	257
186h	258
186i	259
186j	260
186k	261
186l	262
187	263
189	629
190	690
191	211
192	692
193	796
194	649
195	345
195a	346
195b	347
196	650
197	240
198	241
199a	605
Chapter XIII	
1361	361
1362	362
1369	369
1370	370
Chapter XIV	
1400	700
1403	701
1410	702
1430	703
1440	705
1450	708
1451	710
1460	795
1470	714
1480	716
1490	718
1495	720
Chapter XV	
1501	730

24 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter II	
279	614

TABLE 1—List of CFR Sections Affected Formerly Appearing in Title 34, Government Management

Title 34, Government Management was vacated and existing regulations transferred to Title 5, Part 1310, at 44 FR 60286, Oct. 19, 1979.

All sections in former Title 34 of the Code of Federal Regulations which were affected by documents published in the Federal Register since December 7, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1973–1974

(Regulations published from Dec. 7, 1973 to July 1, 1974)

34 CFR

	38 (39*) FR Page
Title established	33769
Chapter II	
Chapter established	33769
200 Added	33769
211 Added	34731
231 Added	35464
232 * Added	2606
232 * Appendix B amended	10132
* Appendix C amended	10132
251 Added	33770
252 * Added	1582
253 * Added	797
254 * Added	1014
271 Added	34733
281 * Added	8615

1974–1975

(Regulations published July 1, 1974 through June 30, 1975)

34 CFR

	39 (40†) FR Page
Chapter II	
212 Added	26641
212.4 (c)(5)(ii corrected	27322
(c)(4) and (5) revised	32559
213 Added	32134
232 Appendix A revised	41250
Appendix B revised	41251
Appendix C revised	41251

34 CFR—Continued

	39 (40†) FR Page
Chapter II—Continued	
232.4 Revised	†3290
232.5 Revised	†3290
232.8-1 Added	†3290
233 Added	37367
234 Added	†6780
253.6 Revised	24632
255 Added	27133
256 Added	35787
Appendix O amended	†26031
256.5 (a revised	†26031
257 Added	42355
282 Added	29355

1975–1976

(Regulations published July 1, 1975 through June 30, 1976)

34 CFR

	40 (41Δ) FR Page
Chapter II	
232 Appendix C amended	32329
233 Appendix A amended	30263
235 Added	Δ755
236 Added	48346
256 Appendix M amended (Standard Form 424)	54373
256.4 Revised	51038
256.5 (c) and (d) revised	51038

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

NOTE: Symbol (Δ) refers to 1976 page numbers.

1976-1977

(Regulations published July 1, 1976 through June 30, 1977)

34 CFR	41 (42*) FR Page
Chapter I	
Chapter established	*12
Chapter II	
Chapter heading revised	52454
200 (Subchapter A) Removed	52454
211-213 (Subchapter B) Removed	52454
232 Appendix A redesignated and revised as 41 CFR Subpart 101-38.13	*1477
233 Redesignated as 41 CFR 101-6.100—101.6.112-1 (Subpart 101-6.1) and revised	*14097
234 Removed	52454
235 Heading corrected	54487
236 Removed	52454
251-257 (Subchapter D) Removed	52454

Note: Symbol (*) refers to 1977 page numbers.

1977-1978

(Regulations published July 1, 1977 through June 30, 1978)

34 CFR	42 (43†) FR Page
Chapter II	
231 Removed	40695
232 Removed	56121
235 Removed	†2722
271 Removed	35833, 35853
281 Redesignated as 41 CFR 101-36.501—101-36.508 (101-36.5) in part	†27190
282 Redesignated as 41 CFR 101-35.201—101-35.210 (101-35.2) in part	†27190

1978-1979

(Regulations published July 1, 1978, through December 31, 1979)

34 CFR	43 (44Δ) FR Page
Title vacated and reserved	Δ60286
Chapter I	
Chapter removed and redesignated as 5 CFR Part 1310 (Subchapter B)	Δ60286
1 Added	Δ37913

Note: Symbol (†) refers to 1978 page numbers.

Note: Symbol (Δ) refers to 1979 page numbers.

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since Title 34—Education was established at 45 FR 30803, May 9, 1980, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1980

(Regulations published from May 9 through June 30, 1980)

34 CFR

	45 FR Page
Title established	*30803
Chapters I—VIII established	*30803
SUBTITLE A	
Subtitle established	*30803
4 Added	*30803
5 Added	*30803
5b Added	*30808
5b.1 (b) corrected	*37426
5b Appendix B corrected	*37426
6 Added	*30814
7 Added	*30814
8 Added	*30815
10 Added	*30816
11 Added	*30817
12 Added	*30820
15 Added	*30825
17 Added	*30833
30 Added	*30834
35 Added	*30834
50 Added	*30836
63 Added	*30837
64 Added	*30838
67 Added	*30841
73 Added	*30841
73.735-1207 (b)(1)(ii) corrected	*37426
74 Added	*30856
99 Added	*30911
SUBTITLE B	
Subtitle established	*30918
Chapter I	
Chapter established	*30918
100 Added	*30918
100 Appendix B corrected	*37426

NOTE: Symbol (*) refers to 1980 page numbers.

34 CFR—Continued

Chapter I—Continued	45 FR Page
101 Added	*30931
104 Added	*30936
Incorporation by reference approval	*44090
104.23 (c) note corrected	*37426
106 Added	*30955
106.2 (b) corrected	*37426

1980–1981

(Regulations published from July 1, 1980 through June 30, 1981)

34 CFR

	45 (46†) FR Page
Subtitle A	
Subtitle A Nomenclature changes	86301
3 Added	86491
64.1—64.20 (Subpart A) Heading added	53413
64.1—64.18 (Subpart A) Revised	53416
64.20—64.26 (Subpart B) Added; eff. 7-29-81	†33247
64.70—64.81 (Subpart G) Added	53413
75 Redesignated from 45 CFR Part 100a	77368
Nomenclature changes; text preceding subpart removed	86296
Heading corrected	†10153
75.1 Introductory text redesignated as (a) and revised; (b) added (effective pending congressional review)	84059
(a) and (b) effective date deferred	†10721

NOTE: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Subtitle A—Continued

75.100 Note removed.................... 86297
75.101 (a)(9) amended; (a)(10) redesignated as (a)(11); new (a)(10) added (effective pending congressional review)........ †3205
 (c) added..84059
 (c) effective date deferred........ †10721
75.105 Added (effective pending congressional review)............... †3205
 Effective date deferred............. †12496
75.210 Added (effective pending congressional review)...............84059
 Effective date deferred............. †10721
75.220 (b)(3) revised.......................86297
75.221 (b)(1)(iii) revised............... 86297
75.591 Revised................................ 86297
 Technical correction................. †10153
75.620 (b) revised............................86297
75.626 (a) revised............................86297
75.720 (b) revised............................86297
75.734 Note added.......................... 86296
75.741 Note added.......................... 86296
75.901 Revised................................ 86297
75.902 Removed..............................86298
75.903 (c) revised...........................86298
76 Redesignated from 45 CFR Part 100b....................................77368
 Nomenclature changes............... 86296
76.1 Introductory text redesignated as (a) and revised; new (b) added (effective pending congressional review)..............84059
 (a) and (b) effective date deferred..†10721
76.101 Note added..........................86296
76.102 Introductory text revised; (x) and cross reference added (effective pending congressional review)...................... 84060
 Introductory text and (x) effective date deferred.................... †10721
76.103 Note added.......................... 86296
76.301 Note added.......................... 86296
76.401 Note added.......................... 86296
76.591 Revised................................ 86298
76.600 (b) revised...........................86298
76.705 Note added.......................... 86296
76.706 Note added.......................... 86296
76.734 Note added.......................... 86296
76.741 Note added.......................... 86296
76.783 Note added.......................... 86296
77 Redesignated from 45 CFR Part 100c..................................... 77368
 Heading revised.............................86298

34 CFR—Continued

45 (46†) FR Page

Subtitle A—Continued

77.1 (a) removed; (b) and (c) amended.....................................86298
77.2 Removed..................................86298
78 Redesignated from 45 CFR Part 100d...................................77368
 Revised; eff. 7-17-81................. †27305
78.2 (a)(1) revised; (a)(4) redesignated as (a)(5) and revised; new (a)(4) added (effective pending congressional review)... †883
 (a) (1), (4), and (5) effective date deferred........................... †12496
78.3 Amended (effective pending congressional review).......... †883
 Effective date deferred............. †12496
78.6 (a)(4) redesignated as (a)(7); new (a) (4) through (6) added (effective pending congressional review)........................ †883
 (a) and (4) through (7) effective date deferred........................... †12496
78.11 (a) and authority citation revised (effective pending congressional review).................. †883
 (a) and authority citation effective date deferred.................. †12496
78.12 Authority citation (effective pending congressional review)... †883
 Authority citation effective date deferred........................... †12496
78.13 Authority citation (effective pending congressional review)... †883
 Authority citation effective date deferred........................... †12496
78.14 Authority citation (effective pending congressional review)... †883
 Authority citation effective date deferred........................... †12496
78.15 Authority citation (effective pending congressional review)... †883
 Authority citation effective date deferred........................... †12496
78.16 Authority citation (effective pending congressional review)... †883
 Authority citation effective date deferred........................... †12496

NOTE: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Subtitle A—Continued

78.21 Heading, (a), (b), and authority citation revised (effective pending congressional review)....... †883
  Heading, (a), (b), and authority citation effective date deferred....... †12496
78.22—78.28 (Subpart C) Heading revised (effective pending congressional review)....... †883
  Heading effective date deferred....... †12496
78.22—78.24 Undesignated center heading revised (effective pending congressional review)....... †884
  Undesignated center heading effective date deferred....... †12496
78.22 Heading, (a), (b), and authority citation revised (effective pending congressional review)....... †884
  Heading, (a), (b), and authority citation effective date deferred....... †12496
78.23 (a) and authority citation revised (effective pending congressional review)....... †884
  (a) and authority citation effective date deferred....... †12496
78.24 (a), (c), and authority citation revised (effective pending congressional review)....... †884
  (a), (c), and authority citation effective date deferred....... †12496
78.25 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.26 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.27 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.28 Authority citation (effective pending congressional review)....... †884

34 CFR—Continued

45 (46†) FR Page

Subtitle A—Continued

  Authority citation effective date deferred....... †12496
78.31 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.32 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.33 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.34 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.81 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.82 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.83 Revised (effective pending congressional review)....... †884
  Effective date deferred....... †12496
78.84 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.85 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78.86 Authority citation (effective pending congressional review)....... †884
  Authority citation effective date deferred....... †12496
78 Appendix A removed....... †884
  Appendix A removal effective date deferred....... †12496
99.1 Note added....... 86296

NOTE: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Subtitle B

Chapter I Nomenclature changes.......... 86301

Interpretation (effective pending congressional review).......... †4912

104 Interpretation (effective pending congressional review).......... 86390

Interpretation effective date deferred.......... †12495, 12496

Technical correction.......... †13511

Interpretation effective date deferred.......... †18975, 25614

Incorporation by reference approvals.......... †33980

106.4 (a) amended.......... 86298

106.11 Revised.......... 86298

106.15 (b) revised.......... 86298

Chapter II

Chapter II Nomenclature changes.......... 86301

200 Redesignated from 45 CFR Part 116.......... 77368

Revised (effective pending congressional review).......... †5138

Effective date deferred .... †12496

Effective date confirmed (except 200.93-200.95); interim.......... †18976

200.1 (b) revised.......... 86298

200.2 (b) amended.......... 86298

200.92 (b) revised; interim.......... 18976

200.93—200.95 Designated as guidelines (effective pending congressional review).......... †18976

200.93 (a) revised (effective pending congressional review).......... †18977

200.94 (d) (2) and (3) revised; (d) example removed; (f) example amended (effective pending congressional review).......... †18977

201 Redesignated from 45 CFR Part 116a.......... 77368

Revised (effective pending congressional review).......... †5160

Effective date deferred.......... †12496

Effective date confirmed (except 201.130—210.144); interim.......... †18976

201.1 (b) revised.......... 86298

201.118 (a) revised; interim.......... †18977

Note: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Chapter II—Continued

201.130—201.144 Undesignated center headings and text designated as guidelines (effective pending congressional review).......... †18976

201.130 Revised (effective pending congressional review).......... †18977

201.144 Correctly added (effective pending congressional review).......... †18977

203 Redesignated from 45 CFR Part 116c.......... 77368

204 Redesignated from 45 CFR Part 116d.......... 77368

204.12 (b)(12) revised.......... 86298

208 Redesignated from 45 CFR Part 119.......... 77368

208.4 (b) amended.......... 86298

208.10 (e) revised.......... 86299

Authority citation corrected.......... †10154

209 Redesignated from 45 CFR Part 120.......... 77368

209.4 (b) amended.......... 86299

211 Redesignated from 45 CFR Part 191.......... 77369

211.33 Revised (effective pending congressional review).......... †5373

Effective date deferred.......... †12496

211.45 Revised (effective pending congressional review).......... †5374

Effective date deferred.......... †12496

211.49 Revised (effective pending congressional review).......... †5374

Effective date deferred.......... †12496

215 Redesignated from 45 CFR Part 158.......... 77369

215.15 Revised (effective pending congressional review).......... †5375

Effective date deferred.......... †12496

215.42 Heading and (b) revised (effective pending congressional review).......... †5376

Effective date deferred.......... †12496

215.52 Revised (effective pending congressional review).......... †5376

Effective date deferred.......... †12496

218 Redesignated from 45 CFR Part 111.......... 77368

219 Redesignated from 45 CFR Part 112.......... 77368

219.1 (c) revised.......... 86299

220 Redesignated from 45 CFR Part 113.......... 77368

220.1 (d) revised.......... 86299

Authority citation corrected.......... †10154

34 CFR—Continued

45 (46†) FR Page

Chapter II—Continued

221 Appendix A amended............86299
221 Redesignated from 45 CFR Part 114............77368
221.64 (b) revised............86299
222 Redesignated from 45 CFR Part 115............77368
222.70 (a) amended............86299
222.83 (c) revised............86299
223 Added (effective pending congressional review)............†7199
  Effective date deferred............†12496
230 Added............†4536
  Effective date deferred............†12496
231 Added............†4541
  Effective date deferred............†12496
240 Redesignated from 45 CFR Part 197............77369
  Revised (effective pending congressional review)............80989
  Correctly revised............†9873
241 Redesignated from 45 CFR Part 198............77369
  Removed (effective pending congressional review)............84060
250 Redesignated from 45 CFR Part 186............77369
251 Redesignated from 45 CFR Part 186a............77369
252 Redesignated from 45 CFR Part 186b............77369
253 Redesignated from 45 CFR Part 186c............77369
254 Redesignated from 45 CFR Part 186d............77369
255 Redesignated from 45 CFR Part 186e............77369
256 Redesignated from 45 CFR Part 186f............77369
257 Redesignated from 45 CFR Part 186g............77369
258 Redesignated from 45 CFR Part 186h............77369
259 Redesignated from 45 CFR Part 186i............77369
260 Redesignated from 45 CFR Part 186j............77369
261 Redesignated from 45 CFR Part 186k............77369
262 Redesignated from 45 CFR Part 186l............77369
263 Redesignated from 45 CFR Part 187............77369
270 Redesignated from 45 CFR Part 180............77369
280 Redesignated from 45 CFR Part 185............77369

34 CFR—Continued

45 (46†) FR Page

Chapter II—Continued

295 Redesignated from 45 CFR Part 161............77369
296 Redesignated from 45 CFR Part 161a............77369

Chapter III

Chapter III Nomenclature changes............86301
300 Redesignated from 45 CFR Part 121a............77368
  Interpretation (effective pending congressional review)............86390
  Interpretation (effective pending congressional review)............†4912
  Interpretation (effective date deferred)............†12495, 12496
  Technical correction............†13511
  Interpretation effective date deferred............†18975, 25614
300.5 (b) (7) and (8)(i) revised (effective pending congressional review)............†3866
  (b) (7) and (8)(i) effective date deferred............†12496
300 Appendix added (effective pending congressional review)............†5461
  Appendix effective date deferred............†12496
301 Redesignated from 45 CFR Part 121m............77368
302 Redesignated from 45 CFR Part 116b............77368
305 Redesignated from 45 CFR Part 121b............77368
305.17 Added (effective pending congressional review)............†5377
  Effective date deferred............†12496
307 Redesignated from 45 CFR Part 121c............77368
307.41 Added (effective pending congressional review)............†5377
  Effective date deferred............†12496
309 Redesignated from 45 CFR Part 121d............77368
309.61 Added (effective pending congressional review)............†5378
  Effective date deferred............†12496
315 Redesignated from 45 CFR Part 121e............77368
315.4 Revised (effective pending congressional review)............†5379
  Effective date deferred............†12496
318 Redesignated from 45 CFR Part 121f............77368

NOTE: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Chapter III—Continued

318.20 Revised (effective pending congressional review)........ †5379
  Effective date deferred............. †12496
320 Redesignated from 45 CFR Part 121g.................................... 77368
322 Added (effective pending congressional review)............... †4915
  Effective date deferred............. †12496
324 Redesignated from 45 CFR Part 121h.................................... 77368
324.3 Revised; conditionally eff. 8-3-81.. †31997
324.4 Revised; conditionally eff. 8-3-81.. †31997
324.5 Removed; conditionally eff. 8-3-81.................................. †31997
324.7 Revised (effective pending congressional review)............... †5380
  Effective date deferred............. †12496
324.8 Revised (effective pending congressional review)............... †5381
  Effective date deferred............. †12496
324.9 Revised; conditionally eff. 8-3-81.. †31997
324.10 Revised; conditionally eff. 8-3-81.................................. †31998
324.11 Added; conditionally eff. 8-3-81.. †31998
324.12 Revised; conditionally eff. 8-3-81.................................. †31998
330 Redesignated from 45 CFR Part 121o.................................... 77368
331 Redesignated from 45 CFR Part 121p.................................... 77368
332 Redesignated from 45 CFR Part 121q.................................... 77368
332.32 Revised (effective pending congressional review)........ †3206
  Effective date deferred............. †12496
333 Redesignated from 45 CFR Part 121r.................................... 77368
338 Redesignated from 45 CFR Part 121k.................................... 77368
338.18 Revised (effective pending congressional review)........ †5381
  Effective date deferred............. †12496
345 Redesignated from 45 CFR Part 195.. 77369
346 Redesignated from 45 CFR Part 195a...................................... 77369
347 Redesignated from 45 CFR Part 195b...................................... 77369
361 Redesignated from 45 CFR Part 1361.................................... 77369

NOTE: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Chapter III—Continued

  Nomenclature change (in part).. 86299
361.1 (Subpart A) Revised (effective pending congressional review).. †5524
  Effective date deferred............. †12496
361.1 (e), (v), and (hh) removed... 86299
361.2—361.58 (Subpart B) Revised (effective pending congressional review)..................... †5526
  Effective date deferred............. †12496
361.15 (b) amended........................ 86299
361.70—361.91 (Subpart C) Revised (effective pending congressional review)..................... †5539
  Effective date deferred............. †12496
361.150—361.155 (Subpart F) Revised (effective pending congressional review)............... †5542
  Effective date deferred............. †12496
361.151 (f) amended........................ 86299
361.170—361.186 (Subpart G) Revised (effective pending congressional review)............... †5543
  Effective date deferred............. †12496
362 Redesignated from 45 CFR Part 1362...................................... 77369
  Nomenclature change................. 86299
362.1—362.30 (Subpart A) Redesignated as new Part 369 and revised (effective pending congressional review)............... †5417
  Redesignation effective date deferred.................................... †12496
362.1 (a) amended........................ 86299
362.14 Removed............................ 86299
362.19 Amended............................ 86299
362.24 Amended............................ 86299
362.40 Redesignated as Part 373 and revised (effective pending congressional review)............... †5427
362.42 Redesignated as Part 375 and revised (effective pending congressional review)............... †5430
362.43 Redesignated as Part 379 and revised (effective pending congressional review)............... †5432
362.45 Redesignated as Part 370 and revised (effective pending congressional review)............... †5421
362.70—362.76 (Subpart E) Redesignated as Part 386 and revised (effective pending congressional review)..................... 86381

34 CFR—Continued

45 (46†) FR Page

Chapter III—Continued

365 Added (effective pending congressional review)...............†5545
  Effective date deferred.............†12496
366 Added (effective pending congressional review)...............†5411
  Effective date deferred.............†12496
369 Redesignated from 45 CFR Part 1369......................................77369
  Nomenclature change...............†86299
  Redesignated as Part 395; new Part 369 redesignated from 362.1—362.30 (Subpart A) and revised (effective pending congressional review)...............†5417
  Redesignation effective date deferred.......................................†12496
369.1 (e) and (r) removed.............86299
370 Redesignated from 45 CFR Part 1370......................................77369
  Nomenclature change (in part)...†86299
  Removed (effective pending congressional review)...............†5551
  Redesignated from 362.45 and revised (effective pending congressional review)...............†5421
  Redesignation and revision effective date deferred.............†12496
371 Added (effective pending congressional review)...............†5423
  Effective date deferred.............†12496
372 Added (effective pending congressional review)...............†5425
  Effective date deferred.............†12496
373 Redesignated from 362.40 and revised (effective pending congressional review)...............†5427
  Redesignation and revision effective date deferred..............†12496

Note: Symbol (†) refers to 1981 page numbers.

34 CFR—Continued

45 (46†) FR Page

Chapter III—Continued

374 Added (effective pending congressional review)...............†5429
  Effective date deferred.............†12496
375 Redesignated from 362.42 and revised (effective pending congressional review)...............†5430
  Redesignation and revision effective date deferred..............†12496
378 Added (effective pending congressional review)...............†5431
  Effective date deferred.............†12496
379 Redesignated from 362.43 and revised (effective pending congressional review)...............†5432
  Redesignation and revision effective date deferred..............†12496
385 Added (effective pending congressional review)...............86379
  Effective date deferred.............†12495
386 Redesignated from 362.70—362.76 (Subpart E) and revised (effective pending congressional review).......................86381
  Effective date deferred.............†12495
387 Added (effective pending congressional review)...............86383
  Effective date deferred.............†12495
388 Added (effective pending congressional review)...............86384
  Effective date deferred.............†12495
389 Added (effective pending congressional review)...............86385
  Effective date deferred.............†12495
390 Added (effective pending congressional review)...............86386
  Effective date deferred.............†12495
395 Redesignated from Part 369 (effective pending congressional review)............................†5417
  Redesignation effective date deferred....................................†12496